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FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 21

BACARDI CORPORATION OF AMERICA,
Petitioner,

vs.

MANUEL V. DOMENECH (*formerly* Rafael Sancho Bonet),
Treasurer of Puerto Rico,
Respondent,

and

DESTILERIA SERRALLES, INC.,
Intervenor-Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS, FIRST CIRCUIT

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the District Court for Puerto Rico ("Opinion, Findings of Fact and Conclusions of Law"; R. 95-106) is not officially reported. The unanimous opinion of the Circuit Court of Appeals, First Circuit, January 12, 1940 (R. 429-443) is reported in 109 F. (2d) 57.

JURISDICTION

Jurisdiction appears to exist in this Court under Section 240(a) of the Judicial Code, as amended by the Act

of February 13, 1925, c. 229, 43 Stat. 938. Certiorari was granted April 22, 1940 (R. 444; 309 U. S. 652).

QUESTIONS PRESENTED

First: Validity of the Legislation

The primary question is of the power of the Legislature of Puerto Rico to enact certain statutes designed to foster the revival of the insular rum industry after the repeal of prohibition, and to protect it, by forbidding the labeling of rum manufactured in the Island with labels theretofore used in foreign countries; and to prevent evasion of this regulation by forbidding shipments in bulk.

The petitioner-plaintiff assails the legislation on several grounds, thus epitomized by the District Court (R. 95):

> "It is alleged that the provisions assailed are repugnant to the due process and equal protection and commerce clauses of the Constitution of the United States, and also violative of the provisions of the Organic Act of Puerto Rico. It is further alleged that the provisions of the Federal Alcohol Administration Act of August 29, 1935, as amended, and the Trade-mark Convention between the United States and various American republics, including Cuba, signed February 20, 1929" [proclaimed, February 27, 1931], "are also violated. The plaintiff alleges that the requirement that all bills shall refer to one subject, which shall be expressed in the title, is not observed."

The District Court ignored, in his opinion, the contention of violation of the Federal Alcohol Administration Act, but [as is noted by the Circuit Court of Appeals; R. 438, top of page] he directly overruled the contention by specifically refusing a "conclusion of law" requested by the plaintiff-petitioner on that point [Plaintiff's Exceptions, R. 117-118]; and passed by the objections to the

form and titles of the Acts, and of supposed violation of the Treaty or Convention, intimating, however, that, had he found it necessary, he would have overruled them (R. 105). But he held the legislation violative of the commerce clause, in so far as it prohibits bulk shipments of distilled liquors out of the Island; and also violative of the due process and the equal protection clauses of the Constitution and of the Organic Act for Puerto Rico.

The Circuit Court of Appeals reversed. It upheld the legislation. It disregarded the objection to the form and titles of the Acts; and it agreed (R. 438) with the District Court that the legislation does not violate either the Federal Alcohol Administration Act or the Treaty or Convention with Cuba; but it disagreed with the District Court on the other issues. As to the commerce clause it adhered to its former decision [*Lugo* vs. *Suazo*, 59 F. (2d) 386, 390; June 7, 1934] that the commerce clause does not extend to Puerto Rico; and it held that the legislation does not violate either the due process or the equal protection clause, either of the Constitution or of the Organic Act for Puerto Rico.

Second: Estoppel of Petitioner to Question It

(2) Another question is presented by the cross contention of the Intervenor-Respondent, and of this Respondent, that, in any event, this plaintiff-petitioner, the Bacardi Corporation, is estopped from questioning the validity of these statutes by its own acts of acquiescence. It applied for and accepted distillers' permits under Act No. 115 of May 15, 1936, the first Act of the series here assailed, which obligated it to consent to compliance with the requirements of the statute. It proceeded under those permits for a year afterwards. The amendatory statute of 1937, enacted before it filed this suit in the District Court, does not affect the essential character of the legislation. The District Court overruled this contention of the Re-

spondents (R. 103-104). The Circuit Court of Appeals considered it unnecessary to decide it (R. 443; 109 F. (2d), at p. 66), in view of its determination that the statutes are valid.

Explanatory of the Positions of the Parties

There is under the heading "Statement" (*infra*, pp. 12-19) an analysis of the three statutes enacted to the end first above stated, at three succeeding sessions of the Legislature,[1]—the first two "experimental" in nature, to remain in effect only for short times; and the third permanent, reciting that the plan had proven satisfactory.

After the bill for the first of the experimental Acts had been introduced in the Legislature,[2] and notice of the plan had thereby been given to the world, the present petitioner, the American agency of the Cuban corporation, Compania Ron Bacardi, S. A.,[3] amended its federal permit, on March 28th, so as to permit it to do business in Puerto Rico (R. 4-5); and applied for a license, on March 31st, and received it on April 6, 1936, to do business as a "foreign corporation" in Puerto Rico (R. 284-286); and later, applied for and received from the insular Treasurer on July 20, 1936, a permit under the first Act[4] for distilling, rectifying and warehousing alcohol (R. 228). In accepting this permit, petitioner expressly accepted the conditions, as the Act required [Sec. 41; *infra*, pp. 14-16] binding it to compliance with the statute.

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[1] Act No. 115, approved May 15, 1936, at the Regular 1936 session; Act No. 6, June 30, 1936, at the Special Session of 1936; and Act No. 149, May 15, 1937, at the Regular 1937 session. Pertinent parts are quoted in the "margin" [foot-note] to the opinion of the Circuit Court of Appeals, R. 430-434; 109 F. (2d), at pp. 59-60. See also, for the two latter, the Appendix to our "Suggestions of Respondent in Opposition" to the petition for certiorari here, pp. 62-68; and, as to Act No. 115, *infra*, pp. 14-16.

[2] Necessarily by Saturday, March 21, 1936; in view of

So that, *whatever investment* it may claim to have made in Puerto Rico, *was made with full knowledge of the statutory plan.*

The statute exempts from its prohibition the use of foreign labels actually registered and in use in Puerto Rico prior to February 1, 1936, and of domestic labels "used exclusively in the continental United States" prior to that date,—that is to say, prior to the first day of the month when the regular session of the Legislature convened at which the first of these Acts was adopted. That exemption was made in fairness to firms who had actually invested money in Puerto Rico in good faith before the plan was instituted. That was considered reasonable by the Court of Appeals (R. 442; quoted, *infra*, p. 9).

Respondent believes that the decision of the Circuit Court of Appeals was right, and should be affirmed. The objection made by plaintiff-petitioner in the District Court to the form and titles of the Acts, which that court said (R. 105) it "would not be disposed to sus-

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the provisions of Sections 33 and 34 of the Organic Act, requiring the Legislature to convene in regular session each year on the second Monday of February, and forbidding the introduction or material alteration of any bill [except the general appropriation bill] after the first forty days of the session. See footnote 8, *infra*, pp. 13-14.

[3] *Confer, infra*, pp. 60-61.

[4] Act No. 115 of the Regular Session, approved May 15, 1936. The second Act, Act No. 6, *supra*, approved June 30, 1936, carrying an emergency clause [Laws of 1936, special session, p. 112; Secs. 105, 106], apparently putting it into effect on July 1, 1936, did not actually take effect for 90 days,—until September 28,—because, as the Executive Secretary's certificate shows (unnumbered Exhibit; original on file in this court), the emergency clause, Sec. 106, was passed only by a majority vote, failing to receive the requisite 2/3 vote.

tain", and which the Circuit Court of Appeals wholly ignored, has not even been mentioned by the petitioner here, either in its petition for certiorari or the supporting brief, or in its present brief on the writ. It appears to have been abandoned; and may, it is submitted, be wholly disregarded by this Court.

CIRCUIT COURT OF APPEALS

As stated, the Circuit Court of Appeals upheld the legislation. It agreed with the District Court that there is no violation of the Federal Alcohol Administration Act; nor of the Treaty; and it ignored petitioner's contention concerning Section 34 of the Organic Act with reference to the form and titles of the Acts. It disagreed, however, with the District Judge as to the other matters, upon which he had upheld the petitioner. It held, in the first place (R. 435-436), following its own earlier decision in *Lugo* v. *Suazo,* 59 F. (2d) 386, 390, that the interstate commerce clause of the Constitution does not run to Puerto Rico, since "Puerto Rico is not a State", and the interstate commerce clause, on its face, relates only to "Commerce *with foreign nations, and among the several states,* and with the Indian Tribes"; and, hence, that the plenary power of the Congress as to commerce between the mainland and a Territory, such as Puerto Rico, rests, not upon that clause, but upon the Constitutional power given the Congress by Article IV, Section 3, clause 2, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States".[5]

The Circuit Court then holds (R. 438-443), upon a careful discussion, that the legislation here involved constitutes a valid exercise of the police power of the insular Legislature, and does not violate either the due process clause or the equal protection clause of the Fifth Amend-

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[5] *Confer, infra,* "Point V", pp. 31-37.

ment and of Section 2 of the Organic Act for Puerto Rico. The court points out (R. 439-440) that the District Court had said in its opinion (R. 101) that Puerto Rico could constitutionally "deny any foreign corporation or non-resident the right to manufacture or sell rum within Puerto Rico"; and the Circuit Court says (R. 439) that, in so holding, "the District Court was right" [citing *La Tourette* vs. *McMaster*, 248 U. S. 465 "supporting the constitutionality of the legislative exclusion of non-resident insurance agents", and *Premier Pabst Co.* vs. *Grosscup*, 298 U. S. 226 (*infra*, pp. 58, 62)]; and then the Circuit Court goes on to say (R. 440; 109 F. (2d), at pp. 64-66):

> "But we think that having the absolute power to prohibit foreign corporations from manufacturing or selling intoxicants the Puerto Rican Legislature had the right to prescribe the conditions under which such business might be conducted. The greater power includes the less. *Ziffrin* v. *Martin*, decided November 13, 1939 by the Supreme Court of the United States;[6] *Seaboard Air Line Railway* v. *North Carolina*, 245 U. S. 298, 304. To say the least, the legislative power to prohibit involves a wide discretion as to the conditions which may be imposed in lieu of total prohibition.
>
> **"The legislative purpose to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital, so as to avoid the increase and growth of financial absenteeism and to favor this domestic industry and to protect it against any unfair competition, was legitimate.** And we may not strike down any legislation designed to effectuate such purpose just because it may be thought unlikely completely to accomplish the desired result. Whether the statutes prohibiting the use of certain trade marks and corporate names and whether the legislation forbidding shipments in bulk (presumably passed in part to prevent an evasion of the trade mark prohibition) will accomplish the desired result

[6] *Ziffrin, Inc.* vs. *Reeves, et al.*, 308 U. S. 132, 138-139.

is not the question for our determination. The Legislature of Puerto Rico possessing 'substantially all the local legislative powers of a state legislature, in all respects here involved' including the local police powers particularly applicable to the liquor business, has manifested its faith in the efficacy of its policy through three successive sessions, the session of 1936, the special session of 1936 and the regular session of 1937, and it is not for us to say whether its faith is well founded. Even if we knew enough about the matter to form a judgment as to the wisdom of these statutes we should be exceeding our function were we to attempt to substitute our judgment for that of the Legislature. As said by the Supreme Court, in *Nebbia* v. *New York*, 291 U. S. 502, 537, 'with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal. * * * Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power.'

"Bearing in mind that doubt is not enough, that unconstitutionality must clearly appear in order to warrant us in holding legislation void, and being unable to say that the statutes here questioned so lack any reasonable basis as to be arbitrary or capricious, we think they should not be invalidated as repugnant to the due process clause of the Constitution of the United States or the Organic Act for Puerto Rico. *St. Joseph Stock Yards Company* v. *United States*, 298 U. S. 38, 51; *Standard Oil Co.* v. *Marysville*, 279 U. S. 582; *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 391.

"The District Court ruled that 'the provisions of Act No. 6 of June 30, 1936 as amended by Act No. 149 approved May 15, 1937, which restrict the use of certain trade marks and corporate names, discriminate arbitrarily against the plaintiff; violate the equal protection clause of the Constitution of the

United States and the Organic Act of Puerto Rico and are invalid.'

"It would seem that the equal protection clause appearing in the 14th Amendment of the Constitution of the United States limits the powers of the states and is inapplicable to Puerto Rico. But this is of no importance here because the Organic Act for Puerto Rico expressly provides that 'no law shall be enacted in Puerto Rico which * * * shall deny to any person therein the equal protection of the laws.' The statutory provision forbidding the shipping of rum in bulk, which applies to all shippers, need not be considered in this connection. The above ruling relates only to the provisions prohibiting the use of certain trade marks and corporate names. As to this aspect of the case, the District Court said, 'whether so intended or not the Act has the appearance of being so framed as to exclude only the plaintiff. It is difficult to conceive of a more glaring discrimination.' *We think the court's ruling that the statutes are invalid as constituting a denial of the equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee was the only manufacturer affected by the particular statutory provisions here considered. But they applied to all who might later engage in the business. The clause in the Act permitting continuance of the use of labels or brands already established in Puerto Rico prior to February 1, 1936, does not unduly discriminate against foreign corporations which had not entered the field before that time. We can not say without doubt upon the subject, that such a statute is unusual or capricious or unjustly discriminatory.* In *Rapid Transit Corp.* v. *New York,* 303 U. S. 573, 578, it is said: 'Although the wide discretion as to classification retained by a legislature, often results in narrow distinctions, these distinctions, if reasonably related to the object of the legislation, are sufficient to justify the classification. * * * Indeed, it has long been the law under the 14th Amendment that "a distinction in legislation is not arbitrary, if any state of facts reasonably can be conceived that would sustain it."' See also *Borden* v.

Ten Eyck, 297 U. S. 251; *United States* v. *Rock Royal Co-op. Inc.*, 307 U. S. [533, 562 *et seq.*]; 59 S. C. 993. Upon the principles heretofore stated and which must govern us in determining the constitutionality of an act of a legislature possessed of ample police powers, we cannot declare any of the statutory provisions here questioned repugnant to the equal protection clause of the Organic Act of Puerto Rico or if applicable the same clause appearing in the 14th Amendment to the Constitution of the United States." (*Emphasis and italics supplied.*)

STATUTES

As already noted (*ante*, foot-note 1, p. 4), the pertinent portions of the Acts here assailed, and of the first Act of the Series, Act No. 115 of the Regular Session of 1936, are in the "margin" [foot-notes; R. 430-434; 109 F. (2d), at pp. 59-62] to the opinion of the Circuit Court of Appeals. They are analyzed under the heading "Statement" (*infra*, pp. 12-19); and those portions of Acts Nos. 6 and 149 here directly assailed are likewise in the Appendix (pp. 62-68) to our "Suggestions" in opposition to the petition for certiorari, as are also other pertinent constitutional and statutory provisions, federal and insular. The pertinent parts of the Treaty or Convention upon which Petitioner relies are in the Appendix to this brief (*infra*, pp. 75-92).

STATEMENT

Bill of Complaint

The bill for a declaratory judgment and injunction, filed in the United States District Court for the District of Puerto Rico on July 31, 1937, against Rafael Sancho Bonet, former Treasurer of Puerto Rico, since succeeded by Manuel V. Domenech, this respondent, is on pages 1 to 23 of the record, and its appended exhibits on pages 25 to 60. Its purpose was epitomized by DISTRICT JUDGE COOPER in his opinion, May 9, 1938, as above quoted (*ante*, p. 2).

It alleges that plaintiff-petitioner, the Bacardi Corporation of America, a Pennsylvania corporation, possesses the right, by contract with Compania Ron Bacardi, S. A., a corporation of Cuba, to use in the United States, including Puerto Rico, the various "Bacardi" trademarks and labels, and also the secret processes or formulae for the making of "Bacardi" rum. That the Bacardi distillery and business was established in 1862 in Santiago de Cuba by Facundo Bacardi, and has been continued by the Bacardi family ever since, and that (R. 3):

> "(3) Bacardi rum is and always has been made according to definite processes and methods which are trade secrets. It is a product of high and recognized quality and enjoys an excellent reputation. The producers of Bacardi rum possess a valuable good will and property right in the name Bacardi and in the trademarks and distinctive labels under which Bacardi rum has always been sold."

It is alleged (R. 3-4) that various of the Bacardi trademarks have been registered in the United States Patent Office, among them seven trade-marks listed in the bill of complaint, that these registrations are based upon corresponding Cuban registrations [**not including,** however, the silver label, *"Carta de Plata,"* proposed to be used in Puerto Rico], and that they are authorized by the Convention between the United States and Cuba, and by United States statutes [46 Stat., Part 2, pp. 2907 *et seq.*, Appendix, *infra,* pp. 75-92; and Act of February 20, 1905, 15 U.S.C., Secs. 81 and 84 (copies of these seven trade-marks are exhibits to the bill, R. 25-31)], and also that four of the Bacardi trademarks, *viz.*, "Bacardi", "Bat Trade-Mark", "Ron Bacardi, Superior Carta de Oro", and "Ron Bacardi, Superior Carta Blanca", were registered on April 10, 1935,

in the office of the Executive Secretary of Puerto Rico. It is also alleged (R. 5) that "the label proposed to be used by plaintiff in Puerto Rico has been approved by the Federal Alcohol Administration under the Federal Alcohol Administration Act of August 29, 1935" (c. 814, 49 Stat. 977; "A copy of such approval" is an exhibit to the bill, R. 34), and that the plaintiff corporation was licensed to do business in Puerto Rico as a "foreign corporation" on April 6, 1936, by certificate of registration from the Executive Secretary of Puerto Rico, and also that, on July 20, 1936, it received from the Treasurer of Puerto Rico a permit for distilling, rectifying and warehousing alcohol.

The particular sections of the Acts assailed are (Prayer of the Bill of Complaint, R. 22):

> "Sections 2, 3, 4 and 5 (insofar as Section 4 adds subsection (b) to section 97 of Act No. 6), and Section 7 of Act No. 149, approved May 15, 1937" [Laws of 1937, pp. 392, 393-396], "and such sections of Act No. 6 of 1936 as any of the aforesaid sections purport to amend." [Act No. 6 of 1936, approved June 30, 1936, appears in the Laws of Puerto Rico, Special Session, 1936, pp. 44-112; Secs. 40, 44 and 97 are, respectively, on pp. 76, 78, and 108; and see *infra*, pp. 16-19, and Appendix to our Suggestions in Opposition to the Petition for Certiorari, pp. 62-68. They are also set forth in substance in the Bill of Complaint (R. 10-15) and, as above stated, in the "margin" of the opinion of the Circuit Court of Appeals (R. 430-434; 109 F. (2d) 57, 59-62).]

The bill also sets out the substance of the Title and of Section 41 of the earlier temporary Act No. 115, the "Alcoholic Beverage Law of Puerto Rico" enacted at the regular 1936 session of the Legislature, and approved May 15, 1936, —[*exactly one year earlier than* Act No. 149 of 1937],— as an "emergency" act to remain in effect only until September 30, 1936, "as it contains provisions of an experi-

mental nature'' (Sec. 97). Laws of 1936, pp. 610, 640-646, 678; *infra,* pp. 14-16.[8]

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[8] Under the provisions of Section 33 of the Organic Act for Puerto Rico as amended by the ''Butler Act'' of March 4, 1927 (44 Stat. 1418, 1420) requiring regular sessions of the Legislature to convene on the second Monday in February of each year, and to close not later than April fifteenth following, and of Section 34 of the Organic Act (39 Stat. 951, 961) providing that

> ''No bill, except the general appropriation bill for the expenses of the Government only, introduced in either house of the Legislature after the first forty days of the session, shall become a law'',

and that (*ib.,* p. 961):

> ''* * *, and no bill shall be so altered or amended on its passage through either house as to change its original purpose'',

and in view of the fact that, in the year 1936, the second Monday of February, when the Legislature convened under Section 33, fell on February 10th, and that the forty days thereafter limited by the Congress for the introduction of bills expired on Saturday, March 21st, and the expiration date for the session was April 15th [leaving the Governor thirty days thereafter within which to act on bills passed at the session; Organic Act, Sec. 34, 39 Stat., at p. 961], it is evident that the bill which ultimately became this Act No. 115, the ''Alcoholic Beverage Law of Puerto Rico'', approved by the Governor on May 15, 1936, must have been introduced and pending before the Legislature in the form of a bill giving substantial notice of its final provisions not later than March 21st, 1936, that is to say, a full week before the plaintiff-petitioner got its federal permit amended on March 28, 1936, so as to enable it to carry on business in Puerto Rico, and more than two weeks before it received its license to do business in Puerto Rico on April 6 [Bill of Complaint, ''(7)'', R. 5] and within only two weeks after plaintiff had entered into its preliminary agreement for a lease on the building on Marina Street [''(7)'', R. 5-6] and more than two weeks before it had begun any expenditure in in-

Section 41 of this Act No. 115 of May 15, 1936, contained provisions substantially along the same lines as those elaborated in the later Acts No. 6 of June 30, 1936, and No. 149 of May 15, 1937, to which the plaintiff-petitioner now objects. Section 41 of Act No. 115 of May 15, 1936 [the temporary Act, the first of the three Acts of the series] contained the provisions (Laws of 1936, at pp. 640-646) quoted in the plaintiff's bill of complaint (R. 7-9) that:

> "Section 41.—The Treasurer of Puerto Rico shall not issue any license prescribed by this Act for any business establishment which is less than 25 meters from a public or private school.
>
> "B. After the thirty (30) days following the taking effect of this Act, no person shall engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits in Puerto Rico, unless such person is provided with a permit by the Treasurer of Puerto Rico authorizing him to engage in said business. * * *.
>
> "C. The following persons shall be entitled to permits upon application:
>
> "(1) **Every person who on February 1, 1936,** possessed a license or permit issued by the Government of Puerto Rico to engage in the business of distilling, manufacturing, rectifying, and bottling distilled spirits, and who is" [*was*] "on that date engaged in said business.
>
> "(2) Any other person who may fully comply with the following requisites:
>
> "(a) To file with the Treasurer of Puerto Rico an application to engage in the business of manufacturing, distilling, rectifying or bottling distilled spirits, which application shall be made in the manner prescribed by the Treasurer of Puerto Rico and shall contain, among

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stalling its rectifying plant in the building, which expenditures did not begin until April 6 [Bill of Complaint, "(7)", R. 6]; and must have been actually passed by both Houses of the Legislature and sent to the Governor by the adjournment date fixed by the Congress on April 15th, before the plaintiff had incurred any substantial expenditure.

other particulars, the following specific information:

"(I) That such person, by reason of his business experience or because of his financial position or business relations, will possibly begin operations within a reasonable period of time and that he will operate his business in accordance with both the Federal and the insular Laws.

"(II) That the demand for consumption in Puerto Rico and in the rest of the United States, for the class or classes of distilled spirits to be distilled, manufactured, rectified, or bottled, exceeds the production capacity of the holders of permits under this Act, priority to be given to such persons as may have received permits under clause C, paragraph 1, of this title, as well as to the production capacity of the holders of permits granted by the Federal Alcohol Administration to distill, rectify, bottle, and/or manufacture similar distilled spirits in continental United States.

"(III) That the applicant has no intention to violate clause (h) hereinbelow transcribed.

"(IV) That the applicant has no intention to violate clause (i) hereinbelow transcribed.

"(V) That such business will not adversely affect those already established for the manufacture, distilling, rectifying, and bottling of distilled spirits in Puerto Rico."

Clauses (h) and (i) referred to under (III) and (IV) above, are as follows:

"(h) If any kind, type, or brand of distilled spirits of a foreign origin becomes nationally or internationally known by reason of its bearing or showing as its brand, trade name, or trade-mark, the proper name of the manufacturer thereof, such name shall not, in any manner or form whatever, appear on the labels for any distilled spirit of said kind or type manufactured, distilled, rectified, or bottled in Puerto Rico.[9]

[9] This absolute prohibition against using THE PROPER NAME of a famous manufacturer on the label was omitted, —and the requirements in this respect softened down,—in the second Act, Act No. 6 of June 30, 1936.

"(i) The production capacity of existing distilleries, manufacturing plants, and rectifying and bottling plants may be increased so as to meet the consumption demands for the brands now produced, or to meet the demand brought about by the manufacture of new brands not in conflict with clause (g) of this title."

Clause (g) of the same title, referred to in (i) of the title, reads as follows:

"(g) No holder of a permit under this title shall manufacture, distill, rectify, or bottle, either for himself or for others, any distilled spirit locally or nationally known under a brand, trade name, or trade-mark previously used on similar products manufactured in a foreign country, or in any other place outside Puerto Rico; *Provided,* (1) That such limitation, aimed at protecting the industry already existing in Puerto Rico, shall not apply to any brand trade name, or trade-mark used by a manufacturer, rectifier, distiller, or bottler of distilled spirits manufactured in Puerto Rico on February 1, 1936; and (2) such restriction shall not apply to any new brand, trade name, or trade-mark which may in the future be used in Puerto Rico."

The provisions of this Section 41 of that first "experimental" Act of May 15, 1936, were elaborated [and in some respects softened down] by sections 40 and 44 of the second Act of the series, Act No. 6, *supra,* of June 30, 1936 (Laws of Special Session of 1936, pp. 44, 76, 78), which was likewise temporary in nature, to remain in effect for only fifteen months, "until September 30, 1937, as it" [likewise] "has provisions of an experimental charac er (Sec. 106, at p. 112); and were again re-enacted and further somewhat elaborated by the third Act, Act No. 149 of May 15, 1937, Laws of 1937, pp. 392-396, *supra,* which the plaintiff-petitioner now assails.

The second Act, Act No. 6 of June 30, 1936, *supra,* added the provision (Sec. 44, Laws of 1936, Special Session, p. 78; Bill of Complaint, R. 10; Appendix to our Suggestions in Opposition, p. 63):

> "*Provided, further,* That distilled spirits, with the exception * * * industrial alcohol * * *, may be exported from Puerto Rico only in containers holding not more than one gallon".

The third Act of the series, Act No. 149 of May 15, 1937, softened this last prohibition by permitting exportation in bulk where any rectifier "wishes to withdraw from business and to liquidate his stock of rum, provided said stock does not exceed 30,000 gallons" (Sec. 4, adding "Section 44(b)" to Act No. 6; Laws of 1937, p. 394; Appendix to Suggestions in Opposition, pp. 65-66; Bill of Complaint, R. 14).

That Act converted Act No. 6 into permanent legislation (Sec. 6, amending Section 106 of Act No. 6), extending it

> "for an indefinite period of time, as a permanent law, it having evidenced its efficacy during the time it was in force as a law of an experimental nature" (Laws of 1937, p. 395; Appendix to Suggestions in Opposition, p. 67);

and changed the provisions of Sections 40 and 44, concerning the labeling of rum, so as to make them read (Laws of 1937, pp. 393-394; Appendix, *ibid,* pp. 65-66; *Confer,* Bill of Complaint, pp. 12-14):

> "Section 40.—Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: Exact contents of the container; alcoholic content by volume; the place where it was distilled or manufactured, and the name of the bottler or canner. If said alcoholic beverage is rum, said person shall be obliged to have appear prominently on the label the following phrase in English *Puerto Rican Rum,* in letters not less than five-sixteenths (5/16) of an inch high and of lines of one-sixteenth (1/16) of an inch or more in width, said phrase to be not less than three (3) inches long. For containers of four-fifths (4/5) of a pint and less the

phrase *Puerto Rican Rum* must appear on the label in letters not less than one-eighth (⅛) of an inch high, said phrase to be not less than one and one-half (1½) inches long. On the label of every alcoholic beverage shall also appear the word *distilled, rectified,* or *blended,* as the case may be, in accordance with such regulations as the Treasurer may prescribe for the purpose; *Provided, further,* That the trade mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturer, distiller, rectifier, bottler, or canner appears.

"Section 44.—No holder of a permit granted in accordance with the provisions of this or any other Act shall distill, rectify, manufacture, bottle, or can any distilled spirits, rectified spirits, or alcoholic beverages on which there appears, whether on the container, label, stopper, or elsewhere, any trade mark, brand, trade name, commercial name, corporation name, or any other designation, if said trade mark, brand, trade name, commercial name, corporation name, or any other designation, design, or drawing has been used previously, in whole or in part, directly or indirectly, or in any other manner, anywhere outside the Island of Puerto Rico; *Provided,* That this limitation shall not apply to the designations used by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits manufactured in Puerto Rico on or before February 1, 1936."

And this further limitation to the *Proviso* in Section 44 was added by a new section (Sec. 7 of Act No. 149; Laws of 1937, p. 396; Appendix, *ibid,* p. 68):

"Section 7.—In regard to trademarks, the provisions of the *Proviso* of Section 44 of Act No. 6, approved June 30, 1936, and which is hereby amended, shall be applicable only to such trademarks as shall have been used exclusively in the continental United States by any distiller, rectifier, manufacturer, bottler, or canner of distilled spirits prior to February 1st, 1936, provided such trademarks have not been used, in whole or in part,

by a distiller, rectifier, manufacturer, bottler, or canner of distilled spirits outside of the continental United States, at any time prior to said date."

A "declaration of policy" was added (Sec. 1, amending Section 1 of Act No. 6; Laws of 1937, p. 393; Appendix, *ibid,* pp. 64-65); and a new sub-section [97(b)] added to Section 97, authorizing the "holder of a permit obtained under the provisions of this Act or of any other Act" to "appeal to a court of competent jurisdiction" for "protection against violations of this Act on the part of other persons" (Laws of 1937, p. 395; Appendix, *ibid,* p. 67).

Appended as an exhibit to plaintiff-petitioner's bill of complaint is a copy of a "Memorial Addressed to the Legislature of Puerto Rico by Puerto Rican Producers" (R. 39-60), dated "February, 1937," which, however, the District Court rejected when plaintiff offered it in evidence on the trial (R. 130-131).

As already stated, the ground upon which the bill of complaint assails (R. 1522) these sections of Act No. 149 [and of Act No. 6 as amended by Act No. 149] are summarized in JUDGE COOPER'S opinion in the District Court (R. 95) as above quoted (*ante,* p. 2).

Answers to the Bill of Complaint

This defendant-respondent, the Treasurer of Puerto Rico, answered (R. 62-73) maintaining the validity of the statute as a valid exercise of the police powers and of the general legislative powers granted to the Legislature of Puerto Rico by the Organic Act and by the Twenty-first Amendment to the Constitution of the United States, and as necessary enactments for the control and regulation of the liquor traffic, within the powers of the Legislature, and especially of the rum industry, and not any denial of due process or of the equal protection of the laws (R. 72-73); and also, as a "separate and distinct defense" that (R. 72):

"(a) It appears from paragraph (7) of the bill of

complaint that plaintiff herein received from defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol.

"(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted him thereunder and from the effects of the said Act insofar as it provided regulation and control of the liquor traffic by the Government of Puerto Rico up to the present time without even raising any objection to the legality of the said Act."

Intervening Petition and Intervenor's Answer

The intervenor-respondent, Destileria Serralles, Inc., a corporation of Puerto Rico, manufacturing there the rum known as "Don Q," and selling it in the Island and elsewhere, filed a "Petition in Intervention" (R. 73-76), and by leave of court (R. 76-77) an answer as Intervenor (R. 77-92) asserting the validity of the statute, and setting up as its "first", and "fourth" "special and separate defenses" that (R. 91-92), *first*:

"(a) It appears from paragraph 7 of the bill of complaint that plaintiff herein received from the defendant, the Treasurer of Puerto Rico, on July 20, 1936, permits for distilling, rectifying and warehousing alcohol, and intervener alleges, upon information and belief, that the said permits contain a paragraph which translated from the Spanish language, reads as follows:

'This permit is conditioned upon compliance with the provisions of the "Alcoholic Beverages Act" of Puerto Rico and with all regulations applicable in accordance with the laws now in force or which may be in force hereafter, and Federal laws and regulations applicable, and shall remain in force from the date of its issuance and until it may be suspended, revoked, annulled, surrendered voluntarily or terminated by virtue of the provisions of the laws or regulations.'

"(b) Plaintiff accepted the said permits, benefited by the rights and privileges granted it thereunder and intervener is informed and believes that plaintiff has operated under said permits";

and, *fourth:*

"4. For a fourth, further, separate and distinct defense in point of law arising from the face of the bill of complaint, intervener alleges that plaintiff herein is barred by his laches to assail the validity of the statutes aforesaid."

Intervenor's "second" and "third" "separate and distinct defenses" (R. 91-92) are assertions of the validity of the statute, on substantially the same grounds upon which this respondent, the Treasurer of Puerto Rico, asserted its validity in his answer (*ante,* pp. 19-20).

Hearing

A preliminary injunction was granted August 23, 1937, *pendente lite* (*recital in opinion*; R. 95); and the case came on for trial in January, 1938 (R. 93-94) on evidence taken in open court, appearing in the "Statement of Evidence" and Exhibits (R. 127-181, and 182-415). Certain original exhibits, labels, samples of advertisements and photographs, and samples of advertisements with pictures [Plaintiff's exhibits "U", "AD", "AG", "AH 1-4", "AI", "AJ 1-4", "AT", "AU", "AV" and "AW", and Intervenor's exhibits "B", "D", "E", "F", "G", "H", "I", and "J"] were transmitted to the Circuit Court of Appeals as part of the record on appeal (R. 416-419)].

EVIDENCE

Mr. Jose M. Bosch, Vice president of the petitioner, the Bacardi Corporation of America, and also Vice president of the Cuban company, Compania Ron Bacardi of Cuba, and its agent in the United States, who was born in Santiago, Cuba, and married into the Bacardi family (R.

133-134), testified generally as to the Bacardi business, its world-wide character, its advertising, and as to its entry into Puerto Rico (R. 133-174).

He first "arrived in Puerto Rico around the 22nd of February, 1936"; "came to study the possibility of establishing a plant for the production of Bacardi rum here in the Island" (R. 140). He stated the nature of the relations between the Cuban company and the Pennsylvania company, this plaintiff "Bacardi Corporation of America", and the way in which the rum is made in Puerto Rico, really under the supervision of the Cuban company (R. 133-147).

SUMMARY OF ARGUMENT

Plaintiff-petitioner, *alter ego* of the Cuban Bacardi Company, attempted to forestall Puerto Rican legislation designed to protect revival of the local rum manufacturing industry after the repeal of Prohibition; and now claims thus to have acquired "vested rights" beyond the reach of the legislation.

The Legislature of Puerto Rico possesses substantially all of the local legislative powers of a State legislature, in the respects here involved, including the police power, and particularly the power to regulate or prohibit the manufacture, transportation, sale, or delivery, or other traffic in intoxicating liquor. Petitioner is mistaken in asserting that there is some indefinite implied limitation on the powers of the Legislature, not expressed in the Congressional grant of "all local legislative powers", and that "The territory exists for the nation, not the nation for the territory". That colonial doctrine of the 16th and 17th Centuries has never obtained in the United States.

The police power as habitually exercised by the State legislatures extends to the enactment of laws to promote good order and the general welfare of society; as well as the safety, health, and morals of the community.

The Twenty-first Amendment leaves the States and Territories free to adopt and enforce such regulations as they may see fit concerning "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors", and expressly forbids violations of local laws. This court has decided in the *Ziffrin* case, that a State may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of where or when produced, or obtained, or the use to which they are to be put, and may adopt measures reasonably appropriate to effectuate these inhibitions and may exercise full police authority in respect of them; and that, having power absolutely to prohibit, it may also permit these things under definitely prescribed conditions, and may exercise large discretion as to the means to be employed.

The commerce clause does not extend to Puerto Rico, since it relates only to the several States. The plenary power of the Congress to regulate the commerce of Puerto Rico, both internal and external, is derived, not from the commerce clause, but from the provision of Article IV of the Constitution empowering it to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States".

The validity of this Territorial legislation depends on the broad legislative powers which the Congress has delegated to the Legislature.

Even the States of the Union, expressly bound by the commerce clause, are not prevented by it from legislating, in the exercise of their police powers, with relation to intoxicating liquors; forbidding, for example, the manufacture of such liquors within the State, or making such regulations as the Legislature may see fit concerning their production.

The fact that the Congress itself has chosen not to

legislate in any particular field does not imply any prohibition against the Legislature of Puerto Rico enacting local legislation in that field; nor does the fact that the Congress has chosen to legislate generally in any particular field imply any prohibition against the Legislature of Puerto Rico enacting local legislation in the same field, so long only as the local insular legislation does not conflict with the legislation of the Congress. This court has so decided in the *Shell Company* and the *Rubert Hermanos* cases.

This insular legislation does not conflict in any way with the Federal Alcohol Administration Act. The lower courts, the District Court as well as the Circuit Court of Appeals, rightly so held. On its face, the federal Act contains no grant of powers to permittees under it. It is wholly prohibitory: "It shall be unlawful, unless", etc., etc., in the different sections. There is nothing to prevent an individual State or Territory from adding additional restrictions. To the contrary, its wording in several places, expressly contemplates possible additional requirements of "State law".

These Acts of the Legislature of Puerto Rico do not contravene the General Inter-American Convention for Trade Mark and Commercial Protection, to which Cuba and the United States are parties, which was signed in 1929 and proclaimed in 1931. That Convention does not give any greater rights within the United States to the registrant of a mark in a foreign country than to original registrants in the United States. The District Court rightly held that "The Treaty gives no preferential advantage to a citizen of Cuba"; with which the Circuit Court of Appeals rightly agreed. In any event it does not appear that petitioner's "silver label", "Carta de Plata", which it desires to use in Puerto Rico, has ever been registered in Cuba or outside of the United States so as to be entitled to the protection of the Treaty in any

way. The general purpose of the Treaty is simply to prevent piracy of marks and unfair competition.

This insular legislation does not violate the due process clause of the Fifth Amendment nor the provisions of the first clause of Section 2 of the Organic Act guaranteeing due process and equal protection of the laws. The Circuit Court of Appeals correctly so held. In any case no actual deprivation of property is here involved, since this petitioner corporation, the *alter ego* of the Cuban company, was not doing business in Puerto Rico before the legislation was introduced. With full notice, it attempted to create supposed "vested rights" while the legislation was pending, and by increasing its investment after actual enactment of the first and second Acts of the series.

This legislation is valid. The decision of the Circuit Court of Appeals was right, and should be affirmed.

ARGUMENT

Background

After the repeal of prohibition, Puerto Ricans set about reviving the island's ancient rum industry. They were handicapped by the loss of their markets during the prohibition era, and by all of the difficulties incident to establishing a new manufacturing business. They possessed the advantage for our mainland markets of manufacturing within the United States tariff wall. Foreign companies already in possession of the market and financially established, desired also to secure the tariff advantage by starting plants in United States territory. One or two foreign companies came to Puerto Rico, indicating what might follow. The Legislature moved to protect the local industry by forbidding the use of foreign labels on liquors distilled in Puerto Rico, and preventing evasion of that regulation by forbidding shipments in bulk. The Cuban corporation Compañía Ron Bacardi, through this corporation which it organized

in the United States, in Pennsylvania, sought to forestall this legislation by establishing itself in Puerto Rico while the legislation was under consideration. Its vice-president went to Puerto Rico during the session of the Legislature at which the legislation was introduced; and, **while the bill was pending,** got its federal permit amended so as to empower it to enter business in Puerto Rico, and then took out a license under the insular laws for it to do business there as a foreign corporation, and began an investment there; increased it after the passage of the Act; and began manufacturing under a distiller's permit taken out under that Act, but after the second Act was passed. After operating under that permit until the third Act had made the temporary legislation permanent, petitioner now assails the legislation, claiming that it has acquired "vested rights" beyond the legislative reach. [*Confer* "Statement," *ante,* pp. 10 *et seq.*].

Point I

The Legislature of Puerto Rico possesses substantially all of the local legislative powers of a State legislature, in all the respects here involved, including the police powers, and particularly the power to regulate or prohibit the manufacture, transportation, sale or delivery or other traffic in intoxicating liquors.

A. This court said in *People of Puerto Rico* vs. *Shell Co.,* 302 U. S. 253, decided December 6, 1937 (at pp. 260-262):

> "1. Section 14 of The Foraker Act, passed April 12, 1900, c. 191, 31 Stat. 77, 80, provided that the statutory laws of the United States, not locally inapplicable, should have the same force and effect in Puerto Rico as in the United States, with certain exceptions not material here. Section 27 (p. 82) provided 'That all local legislative powers hereby granted shall be vested in a legislative assembly * * *.' And by Section 32 (p. 83-84), it was provided that the legislative authority 'shall extend to all matters of a legislative character

not locally inapplicable * * *'. These various provisions are continued in force by Sections 9, 25 and 37 of the Organic Act of March 2, 1917, c. 145, 39 Stat. 951. These provisions do not differ in substance from the various provisions relating to the powers of the organized and incorporated continental territories of the United States, in respect to which this court said in *Clinton* v. *Englebrecht,* 13 Wall. 434, 441, that the theory upon which these territories have been organized 'has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress'; and in *Hornbuckle v. Toombs,* 18 Wall. 648, 655-656, we said: 'The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any State legislature'. See also *Cope v. Cope,* 137 U. S. 682, 684, where this court, speaking of this typical general provision contained in the Utah Organic Act, said that, with the exceptions noted in the provision itself, 'the power of the Territorial legislature was apparently as plenary as that of the legislature of a State.' In *Maynard v. Hill,* 125 U. S. 190, 204, the essential similarity of the various provisions in respect of the powers of territorial legislatures was pointed out, and it was said that what were 'rightful subjects of legislation' was to be determined 'by an examination of the subjects upon which legislatures had been in the practice of acting with the consent and approval of the people they represented.'

"The grant of legislative power in respect of local matters, contained in Section 32 of the Foraker Act and continued in force by Section 37 of the Organic Act of 1917, is as broad and comprehensive as language could make it. The primary question posed by the challenge to the validity of the act under consideration is whether the matter covered by the act is one 'of a legislative character not locally inapplicable.' * * *.

"2. The aim of the Foraker Act and the Organic Act was to give Puerto Rico full power of local self-determination, with an autonomy similar to that of the states and incorporated territories. *Gromer v. Standard Dredging Co.,* 224 U. S. 362, 370; *Porto Rico*

> *v. Rosaly y Castillo, supra*" [227 U. S. 270], "p. 274. The effect was to confer upon the territory many of the attributes of *quasi*-sovereignty possessed by the states —as, for example, immunity from suit without their consent. *Porto Rico v. Rosaly, supra.* By those acts, the typical American governmental structure, consisting of the three independent departments—legislative, executive and judicial—was erected. 'A body politic'—a commonwealth—was created. 31 Stat. 79, Sec. 7, c. 191. The power of taxation, the power to enact and enforce laws, and other characteristically governmental powers were vested. And so far as local matters are concerned, as we have already shown in respect of the continental territories, legislative powers were conferred nearly, if not quite, as extensive as those exercised by the state legislatures."

See also, to the same effect, the recent decision, March 25, 1940, in *People of Puerto Rico* vs. *Rubert Hermanos, Inc.*, 309 U. S. 543, 547-549.

B. **There is no further, indefinite limitation** upon the Legislature's local legislative powers, outside of limitations contained in the Acts of Congress, such as the petitioner suggests, because of the mere fact that Puerto Rico is a Territory, and not a State.

Petitioner says (*Brief*, p. 22):

> "*The territory exists for the benefit of the Nation;* not the Nation for the territory.
>
> "Territorial law must always yield to national law in case of a direct conflict. *It appears equally apt to suggest* that the local law must fall where it ventures into fields which it was never intended to penetrate." (*Italics supplied*)

Petitioner is reverting to the doctrine of the Seventeenth and Eighteenth Centuries, as to the relation of colonies to the mother country. It has never been the doctrine of this country that "The territory exists for the benefit of the Nation". That was the doctrine that made the Thirteen Colonies revolt. The doctrine of this country has always

been directly to the contrary. Our government, in the Territories as well as in the States, exists for the people; not the people for the government. President McKinley said in his directions, April 7, 1900, to the Philippine Commission

> "In all * * * the government which they are establishing is designed not for our satisfaction, or for the expression of our theoretical views, but for the happiness, peace, and prosperity of the people of the Philippine Islands, * * * to conform to their customs, their habits, and even their prejudices, to the fullest extent consistent with the accomplishment of the indispensible requisites of just and effective government."

and General Miles in his Proclamation to the People of Puerto Rico when he landed with his Army at Ponce on July 28, 1898, promised:

> "We * * bring you protection, not only to yourselves but to your property, to promote your prosperity, and bestow upon you the immunities and blessings of the liberal institutions of our government." (Annual Report, Commanding General of the Army, 1898, pp. 51-52).

That has always been the spirit of our government with relation to the Territories; and its settled policy. It is the spirit in which this court, in the *Shell Company* case and in

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[13] *People of Puerto Rico* vs. *Shell Co.*, 302 U. S. *supra*, 253, 260-263; *People of Puerto Rico* vs. *Rubert Hermanos, Inc., supra*, 309 U. S. 543, 547-549. In the *Shell Company* case this court quoted (*ante*, p. 27) what had been said in *Clinton* vs. *Englebrecht*, 13 Wall. 434, 441, that the theory upon which the Territories have been organized "*has ever been that of leaving to the inhabitants all the powers of self-government consistent with the supremacy and supervision of National authority, and with certain fundamental principles established by Congress*"; and cited and quoted other cases indicating the settled policy of our people. It is not just "By Custom," as petitioner suggests (*Brief*, p. 21). It is the established policy of our government from its earliest foundation.

the recent *Rubert Hermanos* case [13] interpreted the broad grant of legislative powers which the Congress gave to the Legislature of Puerto Rico by the Organic Act of 1917, as well as to the earlier Legislative Assembly by the Foraker Act of 1900.

There is nothing in that interpretation by this court even remotely suggesting any such idea as the petitioner advances, either that "The territory exists for the benefit of the Nation"; or that, in addition to the established rule that Territorial law must always of necessity yield to national law in case of a direct conflict, there is any further indefinite, or implied, limitation on the powers of the Legislature, such as counsel suggest, wherever in the opinion of counsel the Legislature has "ventured into fields into which it was never intended to penetrate". The powers of the Legislature are defined by law, by the Organic Act and other Acts of Congress. They are capable of determination by reference to the language of the Acts. They are not subject to further indefinite limitation by guess-work, or by philosophic speculation as to "fields which it was never intended to penetrate".

Point II

In the exercise of the police power in local legislation the State legislatures exercise all of the unlimited powers of the English Parliament, except in so far as their powers may be expressly limited by the State constitution or by the Federal Constitution or by Congressional legislation pursuant to Constitutional power.

This Court has said:

> "* * * the States possess all the powers of the Parliament of England, except such as have been delegated to the United States or reserved by the people."
>
> *Munn v. Illinois,* 94 U. S. (4 Otto) 113, 124
>
> (WAITE, CH. J.)

Point III

The police power, as habitually exercised by the State legislatures, extends to the enactment of laws to promote good order and the

general welfare of society, as well as the safety, health and morals of the community.

It extends, particularly, to the enactment of laws for the regulation, transportation, sale and delivery of intoxicating liquors.

Point IV

The Twenty-first Amendment to the Constitution leaves the States and Territories wholly free to adopt and enforce such regulations as they may see fit concerning "The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors", and expressly forbids violations of such local laws.

The purpose of that provision in Section 2 of the Amendment is

> "to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes". *State Board of Equalization of California vs. Young's Market Co.*, 299 U. S. 59, 62; *Mahoney, Liquor Control Commissioner of Minnesota vs. Joseph Triner Corp.*, 304 U. S. 401, 403, 404.

And, as was held in *Ziffrin, Inc.* vs. *Reeves*, 308 U. S. 132, 138-139:

> "Without doubt a State may absolutely prohibit the manufacture of intoxicants, their transportation, sale, or possession, irrespective of when or where produced or obtained or the use to which they are to be put. Further, she may adopt measures reasonably appropriate to effectuate these inhibitions and exercise full police authority in respect of them • • •.
>
> "Having power absolutely to prohibit manufacture, sale, transportation or possession of intoxicants, was it permissible for Kentucky" [*Puerto Rico*] "to permit these things only under definitely prescribed conditions? Former opinions here make an affirmative answer imperative. The greater power includes the less. • • • The State may • • • exercise large discretion as to means employed."

Point V

The commerce clause is not applicable to Puerto Rico. It relates only to commerce "among the several States" of the Union.

A. The Circuit Court of Appeals for the First Circuit said in *Lugo* vs. *Suazo*, 59 F. (2d) 386, 390, June 7, 1934 [followed in its opinion in the present case; R. 435-436; 109 F. (2d) 57, 62-63]:

"The commerce clause does not extend to Puerto Rico."

B. The language of the commerce clause is (Clause 3, Section 8, Article I):

> "The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes".

C. Manifestly, that language relates only to the States of the Union, and to commerce among themselves and with foreign nations and with the Indian tribes. The Circuit Court was plainly correct, therefore, in its holdings in the *Lugo* vs. *Suazo case, supra*, and in the present case, that the commerce clause does not extend to Puerto Rico.

D. It follows that the District Court was in error in holding in this case that the Acts of the Legislature of Puerto Rico here involved are violative of the commerce clause of the Constitution (R. 104-105, 116 ["14"]; and that the Circuit Court of Appeals was right in overruling the District Court, in this respect. The commerce clause is not here involved.

E. The constitutional relation between the legislative jurisdiction of the Congress and that of the Legislature of Puerto Rico is vitally different in this respect from the Constitutional relation between the legislative jurisdiction of the Congress and that of the State legislatures. In determining the validity of a Puerto Rican statute the question is not whether it invades the commerce clause, or invades powers which, with relation to the States, are exclusively vested in the Congress; but the test is simply whether it exceeds the powers granted to the Puerto Rican Legislature by the Organic Act and other Acts of Congress.

F. Puerto Rico is not a "State" within the meaning of

that term as it is employed in the commerce clause and elsewhere in the federal Constitution, as, for example, in the Fourteenth Amendment.

Puerto Rico is a Territory of the United States; an organized Territory, although not yet formally "incorporated" into the Union. *People vs. Shell Co., supra,* 302 U. S. 253, 257-259. In legislating with respect to Puerto Rico the Congress acts by virtue of the authority given it by Article IV, Section 3, clause 2, of the federal Constitution, "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States". The federal Constitution applies to Puerto Rico in a general sense only,—in the sense that, as was observed by CHIEF JUSTICE TAFT in the *Balzac* case (*Balzac vs. People of Porto Rico,* 258 U. S. 298, 312):

> "The Constitution of the United States is in force in Porto Rico as it is wherever and whenever the sovereign power of that government is exerted. * * *. The Constitution, however, contains grants of power and limitations which in the nature of things are not always and everywhere applicable, and the real issue in the *Insular Cases* was not whether the Constitution extended to the Philippines or Porto Rico when we went there, but which of its provisions were applicable by way of limitation upon the exercise of executive and legislative power in dealing with new conditions and requirements."

Many of its provisions are inapplicable in or to Puerto Rico, either because of express terms that limit their application to the States [such as the commerce clause and the Fourteenth Amendment] or to other subjects not pertinent in any way to the Territories, or to a Territory such as Puerto Rico not yet formally "incorporated" into the Union; or because, not being in their nature among those clauses which embody "guaranties of certain fundamental personal rights declared in the Constitution" [*Balzac vs. Porto Rico, supra,* 258 U. S. 298, 312], some of the pro-

visions of the Constitution do not limit the action of the Congress in legislating, under Article IV, for the "Territory or other Property belonging" to the United States. For example, this Court has held inappplicable in or to Puerto Rico the provisions of the Fifth Amendment prohibiting criminal prosecutions without prior indictment (*Porto Rico vs. Tapia* and *Porto Rico vs. Muratti*, 245 U. S. 639), the provisions of the Sixth Amendment guaranteeing the right of trial by jury (*Balzac vs. Porto Rico, supra*, 258 U. S. 298), the provisions of Article I, Section 8, Clause 1, requiring that all duties, imposts and excises shall be uniform throughout the United States (*Downes vs. Bidwell*, 182 U. S. 244), and the provisions of Article I, Section 9, Clause 5, that no tax or duty shall be laid on articles exported from any State (*Dooley vs. United States*, 183 U. S. 151).

G. Of course, with respect to the regulation of commerce between Puerto Rico and the States, as well as between Puerto Rico and other Territories, and with foreign nations, the Congress possesses, under the "territorial clause" above mentioned (Article IV, Section 3, Clause 2), the same complete and exclusive powers it possesses, under the "commerce clause", with relation to interstate commerce between the States of the Union. *There remains, however, a sharp distinction between the principles involved,* on the one hand, in a determination whether a statute of a State invades the exclusive power of the Congress under the commerce clause of the federal Constitution and other clauses relating to the States of the Union, and, on the other hand, those principles affecting a determination of the question whether a statute of the Puerto Rican Legislature exceeds the powers which the Congress has granted to that body by the Organic Act.

This is because, in the case of Puerto Rico, the Congress has by the Organic Act (Secs. 25 and 37, Act of March 2, 1917, 39 Stat. 951, 958, 964; Appendix to Suggestions in Opposition, p. 55) dele-

gated all of its own local legislative powers with respect to that Island to the insular Legislature, except as otherwise prescribed or limited by that Act or other acts of the Congress.

It follows that *the Legislature* of Puerto Rico, *in legislating locally* for the government and the people of Puerto Rico *can do anything which the Congress itself could do,* except in so far as otherwise limited by the Organic Act or other acts of Congress. *Haavik vs. Alaska Packers Association,* 263 U. S. 510, 514; *Rafferty vs. Smith, Bell & Co.,* 257 U. S. 226, 232; *United States vs. Heinszen & Co.,* 206 U. S. 370, 385-386; *People vs. Shell Co., supra,* 302 U. S. 253, 259 *et seq; People of Puerto Rico* vs. *Rubert Hermanos, Inc., supra,* 309 U. S. 543, 547-549.

H. Hence **The Legislature of Puerto Rico** in legislating, as in the Acts here in question, in the exercise of its police powers, for the public welfare of Puerto Rico, the protection or development of its local industries, or for the health or welfare of its people, is, in so far as the "commerce clause" is concerned, **or in so far as commerce between Puerto Rico and the States or foreign nations is concerned, restrained only by the provisions of the Organic Act, or other pertinent acts of Congress, if any;** and is not, as is the legislature of a State, confronted with the barrier of exclusive jurisdiction over interstate commerce vested in the Congress by the "commerce clause" of the Constitution.

I. Any question of whether a Puerto Rican statute affecting overseas commerce with the Island, or between the Island and the mainland, or with other Territories, is invalid because of supposed conflict with the legislative jurisdiction of the Congress, is to be determined, not by any reference to the commerce clause of the federal Constitution and the many judicial interpretations of that clause and its bearing on State statutes, but, on the contrary, is to be determined solely by reference to the powers and limitations of the Puerto Rican Legislature prescribed by the Organic Act and other acts of the Congress.

J. Direct regulation of interstate commerce is a field of legislative jurisdiction barred to the States of the Union by the commerce clause of the federal Constitution. It is a field into which they cannot enter, even where it has been left unoccupied by the Congress, excepting in so far as they are permitted to impose reasonable regulations in the exercise of their legitimate police powers. On the other hand, in the case of the Legislature of Puerto Rico, the situation is exactly reversed. In the latter case, the Congress having extended a general grant of all of its own local legislative powers to the Puerto Rican Legislature, subject only to specified statutory exceptions and limitations, the Legislature can enter into and occupy any part of the field from which it is not excluded by some express provisions of the Organic Act, or by some other act of Congress, if any there be, limiting its powers in the direction in question. *People of Puerto Rico* vs. *Shell Co., supra,* 302 U. S. 253, 259-263; *People of Puerto Rico* vs. *Rubert Hermanos, Inc., supra,* 309 U. S. 543, 547-549.

K. Petitioner suggests (*Brief,* p. 61) that the words "the several States" in the Constitution may be construed to include "Territories". But its citations fail to support the suggestion. For instance, it cites *Talbott* v. *Silver Bow County,* 139 U. S. 438, 444. But that case holds simply (at pp. 443-444) that, inasmuch as Section 6 of the National Bank Act of 1864 (c. 106, 13 Stat. 99, 101; reenacted in Rev. Stats., Sec. 5134) providing the places where national banks might be organized, provided for them in "any State, *Territory or district*" [*italics supplied*], therefore, a subsequent taxing section of the Act should be construed as extending also to the Territories, because, as the court there said:

> "Further it is a general rule in the construction of statutes that when in the earlier and declaratory sections the scope and extent of the power and privileges granted are once stated, the character of the grant as thus disclosed controls and interprets all subsequent sections; and it is unnecessary in each subsequent

section to restate or use words and expressions which shall fully disclose the extent of those powers and privileges".

Point VI

Even the States of the Union bound by the commerce clause of the Constitution are not prevented by it from legislating in the exercise of their police powers, with relation to intoxicating liquors, forbidding, for example, the manufacture of such liquors within the State or making such regulations as the Legislature may see fit concerning their production within the State.

A. The legislature may in the exercise of its police powers forbid manufacturing such products within the State, or putting them into the stream of interstate commerce, within the State, except upon such terms and conditions as it may direct. *Ziffrin, Inc.* vs. *Reeves, supra,* 308 U. S. 132, 138-139.

So also, with relation to food products, such as oleomargarine, unless so packed and labeled as to prevent deception or confusion.

B. The commerce clause does not prevent the exercise of the State's local police power, so long as it does not conflict with legislation of the Congress upon the particular subject. *Milk Control Board of Pennsylvania vs. Eisenberg Farm Products,* 306 U. S. 346, 351-352; *Chassoniol vs. City of Greenwood,* 291 U. S. 584, 587; *Hammer vs. Dagenhart,* 247 U. S. 251; *Bacon vs. Illinois,* 227 U. S. 504; *Savage vs. Jones,* 225 U. S. 501, 533; *Western Union Tel. Co. vs. Crovo,* 220 U. S. 374; *N. Y. & N. H. vs. N. Y.,* 165 U. S. 628; *Gulf C. & S. F. R. Co. vs. Hefley,* 158 U. S. 98; *Coe vs. Errol,* 116 U. S. 517.

Point VII

The fact that the Congress itself has chosen not to legislate in any particular field does not imply any prohibition against the Legislature of Puerto Rico enacting local legislation in that field; nor does the fact that the Congress has chosen to legislate generally in any par-

ticular field imply any prohibition against the Legislature of Puerto Rico enacting local legislation in the same field; so long as the local insular legislation does not conflict with the legislation of the Congress.

This Court expressly so held in the *Shell Company* case. The court there said (*People of Puerto Rico* vs. *Shell Co., supra,* 302 U. S. 253, 263):

> "In the light of the foregoing considerations, including the sweeping character of the congressional grant of power contained in the Foraker Act and the Organic Act of 1917, the general purpose of Congress to confer power upon the government of Puerto Rico to legislate in respect of all local matters is made manifest. In this connection it is significant that the only express limitation upon the power is that, in certain of its aspects, it shall be exercised consistently with the provisions of the respective acts. See Secs. 37, 57 of the Organic Act, and Sec. 32 of the Foraker Act. Nothing is expressed in these acts or, so far as we are advised, in any other federal act which suggests a congressional intent to limit the exercise of the power of local legislation to those subjects in respect of which there is an absence of explicit legislation by Congress; and we find nothing in the nature of the power or in the consequences likely to ensue from the duplicate exercise of it which requires an implication to that effect."

And see also, to the same effect, the recent decision in *People of Puerto Rico* vs. *Rubert Hermanos, Inc., supra,* 309 U. S. 543, 547-549.

Point VIII

There is nothing in the acts of the Legislature of Puerto Rico here involved in conflict in any way with the Federal Alcohol Administration Act.

A. The District Court refused to find with the plaintiff-petitioner corporation on this issue. To the contrary, the court refused a "conclusion of law" on this point requested by the

plaintiff. Plaintiff saved a formal exception to the court's refusal (R. 117-118), but did not assign any cross-errors in the Circuit Court of Appeals. This question, therefore, is not properly here in issue in this case, and was not properly before the Circuit Court. That court, nevertheless, considered it, and agreed with the District Court that there is no violation of the Federal Act. [Opinion, R. 436-438; 109 F. (2d) 57, 63-64].

B. On its face the Federal Alcohol Administration Act contains no prohibition against the States adding additional requirements or prohibitions not in conflict with those prescribed by the federal act. (Act of August 29, 1935, c. 814, 49 Stat. 977 *et seq.*)

To the contrary, its wording expressly contemplates possible additional requirements of "State law" [*e.g.* Sec. 4(a)(2)(C), and Sec. 5(e)(2), and also *ib.*, par. 2; 49 Stat. at pp. 979, 982, 983; Appendix, Suggestions in Opposition, pp. 57, 58, 59].

C. Clearly, therefore, the District Court and the Circuit Court were right in refusing to consider the Federal Alcohol Administration Act as having any bearing in this case. The approval of plaintiff's "Carta de Plata" label (Plaintiff's Exhibits "N-1" and "N-2") by the Federal Alcohol Administration (Plaintiff's Exhibit "N") is immaterial here. The administrator's approval was not intended to authorize the plaintiff to override the local Territorial law. It does no such thing.

D. The only supposed "conflicts" which petitioner suggests between the local statute and the federal Act are: (a) That (*Brief*, p. 56) the federal "basic permit" for petitioner to ship rum from Puerto Rico to the United States "does not restrict the size of the containers which may be used in shipment", and that "The act itself contains no such restriction" [except the restriction in Section 6 against shipments in bulk by persons not licensed at all]; and (b)

That (*Brief*, p. 59) "petitioner has been specifically authorized by the administrator of the federal act to use a certain label, the essential part of which Puerto Rico specifically forbids to be used". And petitioner contends (*ib.*, p. 59) that, "If petitioner were compelled to comply with the Puerto Rican act and remove its name from the label it would be violating the federal act".

E. Petitioner apparently misapprehends the purpose and effect, both of the federal Act, and also of the provisions of the local Act in relation to the use of petitioner's own name on the label. There is no prohibition against it (*confer, infra*, "G", pp. 40-41).

F. The federal Act is not a grant of rights. To the contrary it is a series of prohibitions, coupled with permissive exceptions. "*It shall be unlawful, unless,*" [etc., etc., in its different sections]. For example, there is no grant anywhere in the federal statute of any affirmative right to the permittee to ship in bulk. There is simply the federal prohibition against it, *unless* a permit is secured. As above noted ("B", *ante*), there is no prohibition against the individual States imposing additional requirements or prohibitions. Indeed, the federal Act itself apparently contemplates the existence of additional State restrictions. See, for examples: Section 4 (a) (2) (C) [*Appendix to our Suggestions in Opposition*, p. 57], *unless* "the operations proposed • • • are in violation of the law of the State"; Section 5 (e) (2) [*Appendix ib.*, p. 58], "unless required by State law"; and the second paragraph of Section 5 [*Appendix, ib.*, p. 59], "except • • pursuant to regulations • • • for purposes of compliance with • • • or of State law".

G. Petitioner appears to be simply mistaken in its interpretation of the Puerto Rican statute, in saying that (*Brief*, p. 57, *supra*), "The federal approval" of its label "is grounded in large part upon the fact that the label

identifies petitioner with the product", and that "the Puerto Rican statute forbids this very thing". Petitioner apparently still harbors the same mistaken idea, that the Puerto Rican statute forbids petitioner from using its own name on its label, which it expressly stated in its former Brief in Support of its Petition for Certiorari (pp. 23-24) where it expressly claimed that,

> "Thus the federal regulations *require* petitioner's use of its name upon the label. The Puerto Rican statute *prohibits* petitioner's use of its name upon its label." (*Italics are petitioner's own*)

The error of that contention [which petitioner does not now expressly repeat in its present brief, but apparently still relies upon, indirectly, as above stated] was pointed out in footnote 7 (pp. 9-10) to our "Suggestions in Opposition", where it was said:

> "But petitioner misstates the Puerto Rican statute. It does **not** prohibit the use of the manufacturer's name upon its label. **To the exact contrary, it expressly requires** (Sec. 40 of Act No. 6 of June 30, 1936, as amended by Act No. 149 of May 15, 1937)" [*ante*, pp. 17-18]:
>
> > " 'Every person who in Puerto Rico manufactures or places in any container alcoholic beverages taxable under this Act, shall place on each container a label indicating the following particulars: * * * **the name of the bottler or canner.** * * * ; *Provided, further,* That the trade mark or name of the rum must appear prominently on the label in letters of a size at least three times the size of the letters in which the name of the manufacturer, distiller, rectifier, bottler, or canner appears' ". (*Emphasis supplied*)

H. This court stated the test in *Savage* v. *Jones, supra,* 225 U. S. 501, 533-534, as follows:

> "Is, then, a denial to the State of the exercise of its power for the purposes in question necessarily implied in the Federal statute? For when the question is whether

a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which needs must be implied is of no less force than that which is expressed. If the purposes of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power. *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426; *Northern Pacific Ry. Co.* v. *Washington, supra* [222 U. S. 370, 378]; *Southern Ry. Co.* v. *Reid, supra* [222 U. S. 424, 436].

"But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the State. This principle has had abundant illustration. *Chicago etc. Ry. Co.* v. *Solan*, 169 U. S. 133; *Missouri, Kansas & Texas Ry. Co.* v *Haber*, 169 U. S. 613; *Reid v. Colorado*, 187 U. S. 137; *Pennsylvania R. R. Co. v. Hughes*, 191 U. S. 477; *Grossman* v. *Lurman*, 192 U. S. 189; *Asbell* v. *Kansas*, 209 U. S. 251; *Northern Pacific Ry. Co.* v. *Washington*, 222 U. S. 370, 379; *Southern Ry. Co.* v. *Reid*, 222 U. S. 424, 442.

I. The "Corn Syrup" case from Wisconsin [*McDermott* v. *Wisconsin*, 228 U. S. 115, 131-132] which petitioner quotes [*Brief*, p. 58] is not to the contrary. And, besides, that case dealt with *importations* into the State, from other States, and this court there followed its long-established doctrine that the local State statute could not be so enforced as to override a federal statute, enacted under the commerce clause, permitting the goods to be brought in. As to intoxicating liquors, that rule has now been reversed by the Twenty-first Amendment.

Point IX

The acts of the Legislature of Puerto Rico here in question are not in conflict in any way with the Convention between the United States and Cuba proclaimed February 27, 1931 ("Treaty Series' 833; 46 Stat., Pt. 2, p. 2907).

A. As above pointed out [*ante,* pp. 2, 3] the Circuit Court of Appeals determined (R. 438) that the District Court had correctly so held in refusing the proposed "conclusion of law" which the plaintiff requested on this point [to which refusal the plaintiff-petitioner saved a formal exception (R. 118), but has assigned no cross-error]. The District Judge said in his opinion (R. 105):

> "It is unnecessary to express any opinion as to the allegations in the complaint to the effect that the challenged legislation violates the Treaty between the United States and Cuba. If it were necessary I would be disposed to hold against the contention of the plaintiff. The Treaty gives no preferential advantage to a citizen of Cuba. Any right or privilege which the Treaty creates would be subject to a proper exercise of the police power."

B. In so holding the District Judge was clearly right, as the Circuit Court says [R. 438, *supra;* 109 F. (2d) 57, 64]. The purpose of the Convention was to prevent piracy of trade-marks, which is not here involved in any way. Unlike a patent, the registration of a trade-mark under the federal Act is not the grant of a positive right to use the registered mark, and does not authorize the registrant to project the trade-mark into new territory in violation of the local laws. The acquisition of property rights in trade-marks rests upon the laws of the several States and Territories. *American Trading Co. vs. Heacock Co.,* 285 U. S. 247, 257-258; *United Drug Co. vs. Rectanus Co.,* 248 U. S. 90, 98; *American Steel Foundries vs. Robertson,* 269 U. S. 372, 381; *United States Printing & Lithograph Co. vs. Griggs, Cooper & Co.,* 279 U. S. 156, 158. *Confer* also *Hanover Star Milling Co. vs. Metcalf,* 240 U. S. 403, 412.

C. Petitioner's counsel now specifically admit (*Brief*, p. 28) that:

> "Under the common law, a trade-mark is not recognized as an independent property right disconnected from the business in which it is used. * * * Registration does not create the right to use the trade-mark. It is allowed in recognition of a right already acquired by appropriation and use";

but they contend that the effect of the Treaty,—and particularly of the language of the sentence in Article 11 upon which they dwell: "The use and exploitation of trade-marks may be transferred separately for each country",—***is to override this established rule of the trade-mark law in the United States, and to import into the United States the law of the particular country where the mark is first registered,***—in this case, that of Cuba; ***so as to give to the holder of a trade-mark originally registered in a foreign country greater rights in the United States,*** upon registering his mark under the Treaty, ***than an American citizen would have under an original registration here.*** Counsel say (*Brief*, p. 28):

> "Under the civil law, registration is ordinarily all important and the right to use the mark is dependent upon prior registration and not prior use. Once registered under the civil law, the registrant acquires all the substantive rights which prior use in connection with a product or business confers in the common law countries.
>
> "This treaty attempts to reconcile the differing concepts of the two different legal systems and thereby to secure the utmost in protection to those entitled to use the trade-marks in the countries of their origin. 'Every mark duly registered or legally protected' in the country of origin 'shall be admitted to registration or deposit and legally protected' in the other countries adhering to the treaty. (Article 3) *We construe this language to mean that* the registration under the federal statutes or in Puerto Rico of *a trade-mark originally registered in Cuba preserves both nationally and*

in Puerto Rico those substantive rights which registration gave in the country of origin." (*Italics supplied*)

Counsel say also (*Brief*, p. 28, top of the page) with specific reference to Article 11 of the Treaty, that that Article "when read with Article 3",

> "recognizes a substantive right in trade-marks, separate and apart from the business with which they were originally identified. In so doing *it adds to the common law concepts of trade-marks, some of the principles of the civil law prevailing in Latin American countries*";

and again they say (*ib.* p. 29):

> "Another recognition by the treaty of the civil law standards *which the common law did not theretofore recognize* is the right given by Article 11 to use and exploit the trade-marks *separately*. Article 3 and Article 11, taken together evidence an intention that the *owner* of a trade-mark shall *receive the same protection and have the same latitude in dealing with the mark* in all other countries that are parties to the treaty, *that he is entitled to claim in his own country*. Rights thus granted are reciprocal in the truest sense and the only requirements are that they be so registered in each country where protection is sought." (*Italics supplied*)

In other words, Petitioner's contention is that, as above noted, the effect of the Treaty is to override the trade-mark laws of the United States, and of the individual States and Territories, and to import into them the trade-mark law of whatever foreign country a registrant may choose as the place for the initial registration of his mark,—in this case, the trade-mark law of Cuba. **But:**

FIRST. It does not appear, anywhere in this record, what the law of Cuba actually is; and, more importantly,

SECOND. The language of the Treaty does not support the Petitioner's contention.

D. The Treaty is in the Appendix to this brief (*infra*, pp. 75-92). The abbreviated extracts in petitioner's brief (pp. 24-26) are not sufficient fully to reflect its spirit and purpose in this regard. *Taken as a whole, the Treaty evinces no intent whatever to override the local laws of any one of the signatory countries;* but only to provide that registration under the Treaty shall give to the registrant, in each of the signatory countries, whatever rights,—no more and no less,—he would have acquired in that particular country if he had originally registered his mark as an original registration there, on the same date on which he first registered it in any one of the other signatory countries. In other words, the basic purpose was simply to prevent piracy of marks, and to give to the registrant of any mark, upon originally registering it in any one of these countries, the right to international registration, by the means provided in the Treaty, with *exactly the same effect in each country, under its own local laws,* as though he had actually been an original registrant in that country upon the same date on which he actually made his first registration in any one of them.

That does not override the local laws of any one of them; nor import the local laws of any one of them into any other of the signatory countries. It does not disturb any of the local laws; nor give, in anyone of the countries, greater local rights to an international registrant, or to one who has first registered his mark in some foreign country, than are enjoyed locally, in his own country, by a registrant who registers his mark solely in his own country, and not elsewhere. In other words, the Treaty does not give to an American individual or company choosing to register its mark internationally, nor to an alien individual or corporation first registering its mark in some foreign country signatory to the Treaty [as, here, in Cuba] and then asking protection for it under the terms of the Treaty, any greater or different rights in the United States or in any of its States or Territories, than are acquired by an American citizen or an

American corporation registering its mark in the United States under the Trade-Mark Act of Congress of 1905 as amended, and not registering it in any foreign country.

E. Portions of the Treaty that appear to be pertinent here are (*Appendix, infra,* pp. 75, 76, 77, 81-82, 88, 90-91) the following provisions in the Preamble, and in Articles 1, 3, 10, 11, 29, and 35; and the definition of "ownership" contained in the "Eighth Resolution" ("Glossary"), in the accompanying "Final Act":

PREAMBLE:

"Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and

"Convinced of the necessity of undertaking this work in its broadest scope, with due regard for the respective national legislations,

"Have resolved to negotiate the present Convention for the protection of trade marks, trade names and for the repression of unfair competition and false indications of geographical origin, and for this purpose have appointed as their respective delegates, [Here follow the names of the delegates.]

"Article 1.

"The Contracting States bind themselves to grant to the nationals of the other Contracting States and to domiciled foreigners who own a manufacturing or commercial establishment or an agricultural development in any of the States which have ratified or adhered to the present Convention **the same rights and remedies which their laws extend to their own nationals** or domiciled persons with respect to trade marks, trade names, and the repression of unfair competition and false indications of geographical origin or source. (*Emphasis supplied*)

"Article 3.

"Every mark duly registered or legally protected in one of the Contracting States shall be admitted to

registration or deposit and legally protected in the other Contracting States, upon compliance with the formal provisions of the domestic law of such States.

"Registration or deposit may be refused or cancelled of marks:

"1. The distinguishing elements of which infringe rights already acquired by another • • • .

"Article 10.

"The period of protection granted to marks registered, deposited or renewed under this Convention, shall be the period fixed by the laws of the State in which registration, deposit or renewal is made at the time when made.

"Once the registration or deposit of a mark in any Contracting State has been effected, each such registration or deposit shall exist independently of every other and shall not be affected by changes that may occur in the registration or deposit of such mark in the other Contracting States, unless otherwise provided by domestic law.

"Article 11.

"The transfer of the ownership of a registered or deposited mark in the country of its original registration shall be effective and shall be recognized in the other Contracting States, provided that reliable proof be furnished that such transfer has been executed and registered in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

"The use and exploitation of trade marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

"Article 29.

"The manufacture, exportation, importation, dis-

tribution, or sale is forbidden of articles or products which directly or indirectly infringe any of the provisions of this Convention with respect to trade mark protection; protection and safeguard of commercial names; repression of unfair competition; and repression of false indications of geographical origin or source.

"Article 35.

"The provisions of this Convention shall have the force of law in those States in which international treaties possess that character, as soon as they are ratified by their constitutional organs.

"The Contracting States in which the fulfillment of international agreements is dependent upon the enactment of appropriate laws, on accepting in principle this Convention, agree to request of their legislative bodies the enactment of the necessary legislation in the shortest possible period of time and in accordance with their constitutional provisions.

"FINAL ACT

"The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America, represented at the Pan American Trade Mark Conference, assembled at Washington pursuant to the Resolution adopted on February 15, 1928, at the Sixth International Conference of American States, held in the City of Habana, and the Resolution adopted by the Governing Board of the Pan American Union at Washington, on May 2, 1928, designated the delegates hereinafter named:" [Here follow the names of the delegates.]

"EIGHTH RESOLUTION

(February 19, 1929)

"Glossary

"Resolved, That the following glossary be followed in the interpretation of terms contained in the General Inter-American Convention on Trade Mark and Com-

mercial Protection, and in the Protocol on the Inter-American Registration of Trade Marks, approved by the Conference:

* * *.

"**Ownership: as applied to trade marks means** the right acquired by registration in countries where the right to a trade mark is so acquired and **the right acquired by adoption and use in countries where the right to a trade mark is so acquired.**" (*Emphasis supplied*)

F. The Federal Trade-Mark Law of the United States in force at the time of the signature of this Treaty in 1929, and of its proclamation in this country in 1931, as well as ever since, provided (Sec. 1, Act of February 20, 1905, c. 592, 33 Stat. 724, as amended; 15 U. S. C. 81):

"That the owner of a trade-mark used in commerce with foreign nations, or among the several States, or with Indian tribes, provided such owner shall be domiciled within the territory of the United States, or resides in or is located in any foreign country which, by treaty, convention, or law, affords similar privileges to the citizens of the United States, may obtain registration for such trade-mark by complying with the following requirements: First, by filing in the Patent Office * * *."

And Section 4 of the same statute of February 20, 1905, in force at the time of the signature and of the proclamation of this Treaty in 1928 and 1931, provided (c. 592, 33 Stat. 725, 725):

"An application for registration of a trade mark filed in this country by any person who has previously regularly filed in any foreign country which by treaty, convention, or law affords similar privileges to citizens of the United States an application for registration of the same trade mark shall be accorded the same force and effect as would be accorded to the same application if filed in this country on the date on which

application for registration of the same trade mark was first filed in such foreign country:" [11]

G. Petitioner's contention that the effect of the Treaty is to override or change the law of the United States, in so far as it relates to trade marks originally registered in one of the other signatory countries, is, in reality, a claim of a *repeal by implication* of the Federal Trade Mark Act of 1905 as amended, and of the common law of the United States and of the several States and Territories, with relation to trade marks.

Hence the established rules of statutory construction with relation to repeals by implication are applicable here.

H. *Repeals by implication are not favored.*

(a) Passing by the vexed questions which petitioner discusses (*Brief*, pp. 26-27, 31-33) as to how far this Treaty may be self-executing, and as to the status of a Treaty in relation to an Act of Congress,[12] and assuming for the purposes of this case that the Treaty may be considered on a par with an Act of Congress, then the question that is presented upon petitioner's claim that the Treaty operates *pro tanto* as a repeal or modification of the Trade Mark Act of 1905, and of the common law, resolves itself simply into a

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[11] Since the proclamation of the Treaty here in question this section of the United States Trade Mark Act has twice been reenacted by the Congress in substantially in the same form, only changing the initial word "An", as above quoted, to read "That an", and inserting two commas. [Act of June 20, 1936, c. 617, 49 Stat. 1539; 15 U. S. C., edition of 1939, Par. 84.] The later amendatory Act of June 10, 1938, amends this section only by deleting a *proviso* not material here. [Sec. 3, c. 332, 52 Stat. 638, 639.]

[12] But by no means admitting petitioner's contention. *Confer Cameron Septic Tank Co.* vs. *Knoxville*, 227 U. S. 39, 49-50.

claim of *repeal by implication,* since the Treaty contains no express words of repeal.

(b) But the general rule is that repeals by implication are not favored, and that the earlier statute and the later statute [here the Act of 1905, and the common law on the one hand; and this Treaty on the other hand] will stand together, and that there will be no repeal by implication, *unless* they are *necessarily* in conflict; in which case, of course, the earlier statute must give way to the later expression of the legislative will, *but only in so far as the necessary conflict* between them extends, and no further. *Posadas* vs. *National City Bank,* 296 U. S. 497, 503-505. For example, this court said in *Cope* vs. *Cope,* 137 U. S. 682, 686:

> "Nothing is better settled than that repeals, and the same may be said of annulments, by implication, are not favored by the courts, and that no statute will be construed as repealing a prior one, unless so clearly repugnant thereto as to admit of no other reasonable construction."

It is believed that the rule is too well settled to require further citation of authorities.

I. Applying this rule to the present case, it is plain that there is no repeal by implication by this Treaty of the Federal Trade Mark Act of 1905, or the common law. There is nothing on the face of the Treaty indicating any such intent. To the exact contrary, Article 1 of the Treaty expressly provides, as above quoted (*ante,* p. 47) that the nationals of each of the Contracting States shall have

> "*the same rights and remedies* which their laws extend to their own nationals or domiciled persons with respect to trade marks, trade names, and the repression of unfair competition and false indications of geographical origin or source";

and the intention to grant,—*and to grant nothing further,*— to the nationals of the other signatory powers "*the same*

rights and remedies'', and none others, and nothing greater than is awarded to each signatory country's own nationals under its own local laws, is emphasized by the provision in the accompanying "Final Act", in the definition in its "Glossary", of "OWNERSHIP" within the intendment of the Treaty, as above quote (*ante*, p. 50), "as applied to trade marks", as meaning

> "the right acquired by registration in countries where the right to a trade mark is so acquired and *the right acquired by adoption and use in countries where the right to a trade mark is so acquired.*" (*Italics supplied*)

J. The last clause of this definition, which we have placed in italics in the last quotation, was manifestly intended expressly to negative any intent in the Treaty to enlarge the meaning of "ownership" of a trade mark as the result of registration in countries where, as in the United States, registration does not carry with it a substantive right to the use of the mark, but where, as petitioner expressly admits (*Brief*, p. 28; *ante*, p. 44), "registration does not create the right to use the trade mark".

K. *There is nothing to the contrary of this in Article 11 of the Treaty*, upon which petitioner dwells (*Brief*, pp. 28-29; *ante*, p. 45). The mere use of the expression in that article in relation to the separate transfers of marks for separate countries that, "The use and exploitation of trade marks may be transferred separately for each country", cannot be said, in the face of the general intent manifested by other provisions of the Treaty, and in the face of the established rule against repeals by implication, to have been intended to operate, by the mere insertion of the words "and exploitation" in this phrase, to override the express provisions above quoted in Article 1 of the Treaty and in the definition of "Ownership" in the accompanying "Glossary" in the "Final Act"; or, in relation to the pres-

ent case, to override the Act of the Congress of the United States and our common law in relation to trade marks.[13]

L. *Petitioner's contention, if admitted, would, instead of simplifying the law, result in interminable confusion.* Instead of the rights of the registrant of a trade mark in the United States being determined by the Act of Congress and our settled common law, and the laws of the several States and Territories in regard to its use, his rights would, on the contrary, be determined by the varying laws of all the different countries signatory to the Treaty, depending on the law of that particular country in which it might appear that the first registration of the particular mark was claimed to have been made. For example, if the first registration were in Brazil, then we should have to look up the laws of Brazil in force at the time of that registration and apply them in determining the rights in this country of the registrant, under the Treaty. Or if the first registration were claimed to have been in Paraguay, then we should have to look up the laws of Paraguay in force at the time of the registration, and apply them here. And so likewise, if it were in Uruguay, or in the Dominican

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[13] And the language contained in the concluding sentence of the first paragraph of Article 11, and carefully repeated again in exactly the same wording in the concluding sentence of the second paragraph [the particular paragraph containing the words "and exploitation" upon which petitioner here relies] that:

> "Such transfer shall be *recorded in accordance with the legislation of the country in which it is to be effective*" (*Italics supplied*),

is at least as significant of an intention, in accordance with the general spirit of the Treaty, *not to override the local laws,* as is any contrary inference which might otherwise be drawn from the mere use of the words "and exploitation", if they were to be considered as standing wholly alone, and dissociated from their context.

Republic, or in Chile, or in Guatemala, or in Haiti, or [as here] in Cuba, then we should have always to look up the laws of the particular country, as they stood when the first registration was made there, and to apply them here in the United States as the law determining the rights of the particular registrant, imported with his registration into this country for that particular case.

It would be confusion worse confounded. No such result was ever intended by this Treaty. The Senate never had any such thought in mind in ratifying it.

M. In any event, the "Silver Label" ("Carta de Plata") which petitioner now desires to use in Puerto Rico, does not appear ever to have been registered at all in Cuba; and, therefore, does not appear to be entitled to the benefit of the Treaty in any case.

Point X

The acts here assailed do not violate the due process clause of the Fifth Amendment, nor the provisions of the first clause of Section 2 of the Organic Act guaranteeing due process and equal protection of the laws.

It necessarily follows from what has heretofore been said that the only remaining ground upon which petitioner can seek to sustain the decree of the District Court, and to override the unanimous judgment of the Circuit Court of Appeals, is its contention that the insular statutes here assailed violate the provision of the Fifth Amendment,

> "nor shall any person * * * be deprived of life, liberty, or property, without due process of law,"

or that of the first clause of Section 2 of the Organic Act for Puerto Rico (c. 145, 39 Stat. 951, substantially an embodiment of the "due process" clause of the Fifth Amendment):

> "Sec. 2. That no law shall be enacted in Porto Rico

which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws."

This is the substantial question in this case. The District Court resolved it against the validity of the statutes (*Opinion*, May 9, 1938; R. 95, 96-99); but the Circuit Court of Appeals unanimously reversed, and upheld the validity of the insular legislation. [*Confer, ante,* pp. 3, 6-10, and the quotation there (at pp. 7-10) from **the opinion of the Circuit Court of Appeals,** which **is believed manifestly correct**].

Point XI

In approaching this question several basic considerations are to be kept in mind.

A. As above pointed out (*ante,* Points I, II, III, pp. 26-30), and as was held by the Court of Appeals [R. 440-441, *supra*], the Legislature of Puerto Rico in enacting these statutes was *exercising its legislative local police power* for the welfare of the community and for the protection and encouragement of its local industries. In the exercise of that power it was clothed with all of the powers of a State legislature, and with all of the powers which the Congress could itself exercise in such local legislation,—substantially all of the broad powers of the English Parliament in this respect.

B. It was exercising these powers *with respect to the manufacture and traffic in intoxicating liquors,* a subject universally conceded to be peculiarly within the scope of the police powers of the local legislature. [*Confer, Ziffrin, Inc.* vs. *Reeves, supra,* 308 U. S. 132, 138-139].

C. It was,—as appears not only from the substance of both Act No. 6 of June 30, 1936, and Act No. 149 of May 15, 1937, but as well also from the substance of the first act of the series, Act No. 115 of May 15, 1936, and also, expressly, from the "declaration of policy" put into Section

1 by Act No. 149 of May 15, 1937,—intending to exercise its police powers to protect the welfare of the community and to protect and develop its local industries by enacting legislation ["*Declaration of Policy*", Sec. 1(b), Act No. 149, Laws of 1937, pp. 392, 393; Appendix to Suggestions in Opposition, pp. 64-65],

[1] "to protect the renascent liquor industry of Puerto Rico from all competition by foreign capital",
[2] "so as to avoid the increase and growth of financial absenteeism",
[3] "and to favor said domestic industry",
[4] "so that it may receive adequate protection against any unfair competition",
[5] "in the Puerto Rican market",
[6] "in the continental American market",
[7] "and in any other possible purchasing market".

D. This legislative purpose was certainly, as the Circuit Court of Appeals says [R. 440; 109 F. (2d) 57, 65] a "legitimate" purpose.

E. This legislative purpose to protect the local "renascent liquor industry" from "competition by foreign capital", and to "avoid the increase and growth of financial absenteeism", is quite in line with recent developments of legislative policy in a number of the States of the Union, particularly in relation to the manufacture and transportation and sale of intoxicating liquors.

For example, there are statutes of CALIFORNIA discriminating against beer produced anywhere outside of that State [so-called "foreign beer", although perhaps produced in some other State of the Union]; MINNESOTA, discriminating against any liquors produced outside of that State [by forbidding bringing any such liquors into the State containing more than 25% of alcohol "ready for sale without further processing", *unless* bearing brands registered in the United States Patent Office]; PENNSYLVANIA,

discriminating against [a] beer produced outside of the borders of the State, as well as [b] sales by corporations having non-resident stockholders and officers [by means of license fees discriminating against distributors of beer produced outside of the State, and by forbidding sales of beer without a license, and forbidding a license to any corporation "unless all its officers and directors, and fifty-one per-cent of its stockholders have been residents of the State for the period of at least two years"]; KENTUCKY, rigidly regulating the manufacture, sale, transportation, and possession of intoxicating liquors.

Cases involving the validity of the statutes of these four States, respectively, have recently come before this Court, and the statutes have been sustained. *State Board* vs *Young's Market Co.*, 299 U. S. 59; *Mahoney vs. Triner Corp.*, 304 U. S. 401; *Premier-Pabst Co. vs. Grosscup*, 298 U. S. 226; *Ziffrin, Inc.* vs. *Reeves, supra*, 308 U. S. 132, 134, 138-139.

F. The mere fact of the existence of such a wide-spread sentiment and legislative policy among the States of the Union, along lines of thought quite analogous to the policy of the Legislature of Puerto Rico in enacting these statutes, to protect and encourage the growth of local manufacturing liquor industries, and to permit them to recover from the enforced stagnation of the National prohibition period, —*"the renascent liquor industry of Puerto Rico"*,—as well as to protect them from foreign competition, is in itself evidence of the reasonableness of such a policy, and affords strong grounds for a presumption of the constitutionality of the statutes here assailed.

This Court, speaking by CHIEF JUSTICE HUGHES, in *West Coast Hotel Co.* vs. *Parrish*, 300 U. S. 379, 399, has recently said:

> "The adoption of similar requirements by many States evidences a deep-seated conviction both as to

> the presence of the evil and as to the means adapted to check it. **Legislative response to that conviction cannot be regarded as arbitrary or capricious,** and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment." (*Emphasis supplied.*)

G. Similarly, as the Court of Appeals noted [R. 440; *ante*, p. 8], **the persistence of this policy through three successive sessions of the Legislature of Puerto Rico,**—the regular session of 1936, the special session of 1936, and the regular session of 1937,— and the adoption of legislation along these same lines at each one of those three successive sessions,—experimental in character in the first Act; likewise experimental in the second Act, but to remain in effect for a longer period of time; and then, finally, making the legislation permanent in the third Act,—is in itself entitled to consideration as indicative, in the words of the Chief Justice, of *"a deep-seated conviction both as to the presence of the evil and as to the means adapted to check it"*,—a deep-seated persistent conviction throughout the Island.

H. The right to enter into a business, or to carry it on, like the right to contract, is not an absolute or unqualified right; but is one of those forms of the "liberty" guaranteed by the due process clause which, like other forms of liberty, is, as was said in *West Coast Hotel Co. vs. Parrish, supra,* 300 U. S. 379, 391,

> "necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process."

I. Particularly is this limitation to be remembered in the case of a foreign,—*or alien,*—corporation seeking to do

business within a State or Territory. Even with relation to a so-called "foreign corporation" which is "foreign" only in the sense that it is organized under the laws of some other State or Territory of the United States, the local legislature may wholly deny it the right to do business within the local jurisdiction. And where the right wholly to deny entry exists, the Legislature in permitting entry may couple the permit with limitations or conditions. [*Confer Baltimore & Ohio R. Co. vs. Lambert Run Coal Co.*, 267 Fed. 776, 781 (C.C.A.-IV; certiorari denied, 254 U. S. 651); *Ziffrin, Inc. vs. Reeves, supra,* 308 U. S. 132, 138-139].

And especially is this true, as above noted (*ante,* p. "B," p. 56) with reference to a foreign corporation engaging in the manufacture or sale of intoxicating liquors.

J. The foregoing principle is peculiarly applicable in the case of an **alien corporation** asking to do business within a State or Territory. Neither the "due process" clause nor the "equal protection" clause gives any right to an alien corporation to require a State or Territorial legislature to permit it to do business within the State or Territory, nor gives it any right to object to any conditions or limitations that the legislature may see fit to impose upon permitting it to come within the jurisdiction to do business.

Memorandum. This principle is directly applicable here. While, nominally, it is the Pennsylvania corporation, the Bacardi Corporation of America, which is registered to do business in Puerto Rico, yet in fact, the evidence and the findings of the District Court show that it is **really the alien corporation,** Compania Ron Bacardi, S. A. of Cuba, which is seeking to force its way in to do business in Puerto Rico, and is challenging the validity of the local statutes standing in its way. The District Court, upon the testimony of the plaintiff's wit-

ness, Mr. Jose M. Bosch, Vice-president (R. 133) of both the "Bacardi Corporation of America" and also of the Cuban Company, "Compania Ron Bacardi, S. A.", expressly found, (Opinion, R. 103-104):

> "It seems to me that the right of the Cuban company, * * * would have a right to employ an *agent* in Continental United States *to manufacture rum Bacardi for the account of the Cuban company, * * *. And stripped of all legal formalities that is what the contract here in question really is.* The label is to be used only on rum manufactured in accordance with the formula owned by the company, and is to be produced under the personal supervision of an authorized agent of the Cuban company. The testimony further shows that the Cuban company has a substantial participation in the profits of the American company."[10] (*Italics supplied.*)

K. *In relation to intoxicating liquors* [at least], *the Legislature even possesses the power to withdraw a license theretofore issued to a foreign corporation,* even though the foreign corporation has already invested money and built up a business under it. *Mahoney vs. Triner Corp., supra,* 304 U. S. 401, 404. In that case this Court, speaking by MR. JUSTICE BRANDEIS, in dealing with the Minnesota statute to which reference has already been made (*ante,* pp. 57-58), said at p. 404):

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[10] It is to be borne in mind that since, as heretofore pointed out (*ante,* Point V, pp. 31-37) the commerce clause of the Constitution is not applicable in Puerto Rico; and since the Trade-mark Convention with Cuba, in view of the basic law with relation to the nature of trade-marks, does not enable the alien corporation to project its trade-marks into a State or Territory in defiance of the local laws [*ante,* Point IX, pp. 43-55]; and in view of the fact that there is no limitation by the Organic Act or by any other act of Congress upon the

> "*Third.* The fact that Joseph Triner Corporation had, when the statute was passed, a valid license and a stock of liquors in Minnesota imported under it, is immaterial. **Independently of the Twenty-first Amendment, the State had power to terminate the license.** *Mugler v. Kansas,* 123 U. S. 623; *Premier-Pabst Sales Co. vs. Grosscup,* 298 U. S. 226, 228." (*Emphasis supplied.*)

L. In enacting laws with relation to intoxicating liquors, as with other laws enacted in the exercise of the police power, **the Legislature is primarily the judge of the necessity of the enactment.** *West Coast Hotel Co. vs. Parrish, supra,* 300 U. S. 379, 398; *Nebbia vs. New York,* 291 U. S. 502, 537, 538.

Thus this Court said in the *West Coast Hotel Co.* case, *supra,* 300 U. S. 379, 397-398:

> "In *Nebbia v. New York,* 291 U. S. 502 * * * we again declared * * *; that 'with the wisdom of the policy adopted, *with the adequacy or practicability of the law enacted to forward it,* the *courts are both incompetent and unauthorized to deal*'; that 'times without number we have said that *the legislature is primarily the judge of the necessity* of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power.' " (*Italics supplied.*)

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full freedom of the Legislature of Puerto Rico in this respect, it follows that *there is no requirement of federal Constitution or law* upon which this alien Cuban corporation can rely to compel the Legislature of Puerto Rico to permit it to come into the Island and there to enter into the business of manufacturing liquor to be labeled with its foreign trademarks, as it has never done prior to the enactment of the local statutes here in question. The Convention does not clothe it with any such power to override the local Territorial Legislature.

Confer, Puerto Rico vs. *Rubert Hermanos, Inc., supra,* 309 U. S. 543, 549: "How this policy was to be realized was for Puerto Rico to say."

M. *The Legislature possesses wide powers of classification* in relation to the objects and persons to be affected by its legislation. The "equal protection" clause of Section 2 of the Organic Act for Puerto Rico [substantially like the similar clause in the Fourteenth Amentment, which does not extend to Puerto Rico] does not substantially change or enlarge the effect of the "due process" clause of the Fifth Amendment [which is likewise embodied in Section 2 of the Organic Act]. Taken together, these clauses simply require that State [or Territorial] laws apply alike to all persons similarly situated. They do not prevent, or further limit, classification by the Legislature. *Currin vs. Wallace,* 306 U. S. 1, 14; *Borden's Farm Products Co. vs. Ten Eyck,* 297 U. S. 251, 261-264; *Nebbia vs. New York, supra,* 291 U. S. 502; *Borden's Farm Products Co. vs. Baldwin,* 293 U. S. 194, 210; *Barrett vs. State of Indiana,* 229 U. S. 26.

The divided Court decision in *Mayflower Farms, Inc.,* vs. *Ten Eyck,* 297 U. S. 266, upon which petitioner relies (*Brief,* pp. 44-45) is not to the contrary. As MR. JUSTICE ROBERTS there pointed out (at pp. 272, 274):

> "The record discloses no reason for the discrimination. The report of the committee * * * is silent on the subject. * * *, it affords no clue to the genesis of the clause * * *. (p. 272)
>
> "* * * The appellees do not intimate that the classification bears any relation to the public health or welfare generally; * * *. *In the absence of any such showing,* we have no right to conjure up possible situations which might justify the discrimination." (at p. 274; *italics supplied*)

N. **There is a strong presumption in favor of the validity of the legislative action.** He who assails the constitutionality of a statute must be prepared to show that it is *clearly* unconstitutional. The burden is upon him "to make a convincing showing". *Townsend vs. Yeomans,* 301 U. S. 441, 451.

As the Court of Appeals said [R. 441; *ante,* p. 8]:

> "• • • *doubt is not enough,* that unconstitutionality must clearly appear in order to warrant us in holding legislation void." (*Italics supplied.*)

The rule has been re-stated innumerable times. *Confer,* e.g., *Green vs. Frazier,* 253 U. S. 253.

O. **The broad and varied powers of the Legislature in the classification and regulation of industry,** even where not so clearly affected with a public interest as is the manufacture and dealing in intoxicating liquors, **are illustrated in a wide range of cases. Examples are:**

Florida—Miami Laundry Co. vs. Florida Dry Cleaning & Laundry Board, 134 Fla. 1, 8-13; 183 Sou. 759. Fixing minimum prices for laundry and dry cleaning.

Florida—Mayo, Commissioner vs. The Polk Co., 124 Fla. 534 (169 Sou. 41); appeal dismissed for want of a substantial federal question, 299 U. S. 507, 508. "Bond and License Law" of 1935 requiring licenses for citrus fruit dealers and canners.

New York—United States vs. Rock Royal Co-op., Inc., 307 U. S. 533, 562 *et seq.* Act and order of Secretary of Agriculture sustained, although specifically exempting co-operatives, and applicable to independent canners only.

Georgia—Townsend vs. Yeomans, 301 U. S. 441. Maximum charges for handling and selling leaf tobacco.

Illinois—Munn vs. Illinois, 94 U. S. 113. Regulating prices to be charged by grain elevators.

New York—Nebbia vs. People of New York, supra, 291 U. S. 502. Regulating milk prices.

New York—Hageman Farms Corp. vs. Baldwin, 293 U. S. 163. Milk prices.

North Dakota—Brass vs. State of North Dakota, 153 U. S. 391. Maximum charges for storage.

Pennsylvania—Milk Control Board of Pennsylvania vs. Eisenberg Farm Products, supra, 306 U. S. 346. Milk prices.

Washington [State]. *West Coast Hotel Co. vs. Parrish, supra,* 300 U. S. 379. Minimum wages for women.

Point XII

It is in the light of the foregoing principles that the general rule is to be approached.

A. **The general rule is,** as it was stated in the *West Coast Hotel Co.* case, *supra,* 300 U. S. 379, 391, that:

> "regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process".

B. In determining whether the remedy chosen by the Legislature in the exercise of its broad discretionary powers so far exceeds that which may be allowed to be "reasonable" in relation to its subject, or is so widely astray from any apparent public purpose that it cannot be said to be "adopted in the interests of the community", all of the foregoing principles must be borne in mind. As was said by Mr. Justice Roberts speaking for the court in *Borden's Farm Products Co. vs. Ten Eyck, supra,* 297 U. S. 251, 263:

> "Judicial inquiry does not concern itself with the

accuracy of the legislative finding, but only with the question whether it so lacks any reasonable basis as to be arbitrary. *Standard Oil Co. v. Marysville,* 279 U. S. 582, 586-587".

And, as this Court has likewise said:

"The court does not sit as a board of revision to substitute its judgment for that of the Legislature". (*St. Joseph Stock Yards Co. v. United States,* 298 U. S. 38, 51).

Point XIII

Considered in the light of the foregoing established principles, the acts of the Legislature of Puerto Rico here assailed do not violate the "due process" or the "equal protection" clause. They are valid enactments of the local legislative power.

WHEREIN DO THEY OFFEND?

A. The District Court says (Opinion, R. 96):

"when the police power is invoked two things must appear. First, an evil; second, a remedy calculated to correct the evil."

He then, "applying this principle to the instant case" quotes the "declaration of policy" in Section 1(b) of Act No. 149 of May 15, 1937, and says (R. 97): "Here we have the evil". He then asks "What is the remedy provided by the act?"; and, after quoting Section 44 (*ante,* p. 18), continues (R. 97), without further analysis:

"Does the remedy provided correct the evil complained of? It is difficult to see how anyone can urge that it does."

This is all that he says upon the question. That is his decision. The following pages of the opinion are devoted to distinguishing cases (R. 97-102) relied upon by the defendant and the intervenor, and to discussion of the interstate commerce clause (R. 102-105), which he erroneously considers applicable here, and applies, and which he holds the *proviso* to Section 44(b) of the Act (Laws of 1937, at

p. 394; Appendix to Suggestions in Opposition, p. 66) forbidding shipment of distilled spirits [except industrial alcohol, etc.] out of Puerto Rico in containers holding more than a gallon, violates, and therefore to be invalid, *wholly overlooking* the established rule (*ante,* Point V, pp. 31-37) that THE INTERSTATE COMMERCE CLAUSE IS NOT APPLICABLE TO PUERTO RICO AT ALL.

The Circuit Court of Appeals correctly overruled the District Court in this; correctly upheld the validity of the legislation [R. 438-443, *supra; ante,* pp. 7-10].

B. The District Court set up his own individual opinion in opposition to that of the elected representatives of the people in the Legislature upon these questions of fact and of policy. He says (R. 97, *supra*), as above quoted: "Does the remedy provided correct the evil complained of?". And he answers his own question by saying: "It is difficult to see how anyone can urge that it does."

But the members of the Legislature, presumably familiar with local business and social conditions in the Island, have found that it does; and have enacted it into law. The District Court admits that the protection and encouragement of local industries, and discrimination in their favor as against foreign corporations, and particularly as against alien corporations and alien business, and the discouragement or prevention of "financial absenteeism" and, particularly, the protection of "the renascent liquor industry of Puerto Rico" in building it up, after the enforced stagnation by the National prohibition era, are legitimate legislative purposes. But the District Court thinks that the particular remedy adopted by the Legislature in these statutes is not well adapted to those purposes.

C. However, as the Circuit Court of Appeals pointed out (R. 440, *supra; ante,* p. 8), the members of the Legislature, persistently, through three successive legislative ses-

sions have adhered to the opinion that it is; and after twice adopting it experimentally in the two earlier Acts of the series have finally enacted it into permanent legislation by the third Act (Act No. 149 of May 15, 1937), here before us. And it may be suggested that, as a practical matter, and as an effective,—as perhaps the most effective,—practical means of checking "financial absenteeism" in relation to this particular matter of the manufacture of distilled spirits, and especially of rum, in Puerto Rico, and of protecting the Island's "renascent liquor industry" from the devastating competition, while it is being built up, of alien businesses backed by vast aggregations of capital, with world famous names and brands giving them many of the advantages of monopolistic control of the market, the really most effective way was to strike at the use of their alien names and brands in labeling distilled spirits, especially rum, produced in the Island.

Who shall say that the Legislature is not entitled to its opinion on this question; or that its opinion is so merely foolish and unreasonable that it may be disregarded by the courts;—that is to say, that it is so "unreasonable" that "no reasonable man" can be imagined as believing in it.

D. "The proof of the pudding is in the eating". Perhaps the best proof of the effectiveness of the Legislature's remedy is this very lawsuit itself. Here is this great world famous Bacardi organization, with its world famous "Bacardi" brands, anxious to invade the rum manufacturing field in Puerto Rico, and to throw its world famous name into competition with the local Puerto Rican manufacturers; ready, as it itself says (*Bosch, testimony,* R. 138) to spend $2,000,000 or more for that purpose,—[and saying that it costs at least $2,000,000 properly to establish such a business in a new field, which shows what the local manufacturers are facing in endeavoring to build up their "renascent liquor business of Puerto Rico" which the Legis-

lature properly desires to protect],—now finding its designs checked by this very remedy adopted by the Legislature. Hence, it brings this lawsuit; and says that, unless it can have its injunction, it will be "irreparably injured"; that it cannot go ahead in Puerto Rico.

Is not the Legislature's remedy proven effective? Has it not shown itself well adapted to cure the evils stated in the legislative "declaration of policy"?

E. It may also be suggested that there now appears to be another evil attendant upon "financial absenteeism" with respect to this particular industry, the existence of which is developed by the plaintiff's own evidence in this case. Plainly the purpose of this Cuban Bacardi organization in seeking to invade the rum manufacturing field in Puerto Rico is *to come within the United States tariff wall*, so as to be able to manufacture their rum in Puerto Rico and to bring it into the continental United States duty free,—and thereby to save paying the federal Treasury some $4.50 per case in United States tariff duties. But when they undertake to do that, in the manner they do, the Legislature may well have believed that they manifestly *injure the business reputation and the trade of Puerto Rico, generally, in a very serious way.* This goes beyond injury to the Puerto Rican liquor manufacturers, and affects the entire industry of the Island, in the development of which the insular government is necessarily very gravely concerned.

This Bacardi organization possesses and has used for many years, as the evidence in this case shows, brands and labels for rum *"Carta de Oro"* and *"Carta Blanca"*,—it "gold label" and its "white label" ("lined in gold") labels, both world famous [Plaintiff's Exhibits "G" and "H" (*"Carta de Oro"*), and "E" (*"Carta Blanca"*); R. 28, 129, 233-234, 243; 28, 129, 210, 211]. It now proposes to use upon its rum produced in Puerto Rico, not these famous Bacardi gold and white [gold]

labels, but on the contrary, a new label which it has adopted and which it calls its "Carta de Plata" ["silver label"] with a different (yellowish) color, and a *silver* triangle in the lower left-hand corner (enclosing the Bacardi "bat" trade mark) (Plaintiff's Exhibits "N-1" and "N-2"; R. 274, 276), instead of the well-known gold triangle in the lower left-hand corner of the famous "Carta de Oro" Bacardi labels.

The silver label immediately connotes something inferior to the gold. It might very easily do that, to the mind of the ordinary purchaser, despite the fact that the rum manufactured by this organization in Puerto Rico may be, as they say it is (Bosch, test.; R. 144-145), made by exactly the same process as the rum they make in Cuba, and under the same supervision, and is just as good in every respect.

Nevertheless the casual purchaser of rum in the continental United States, seeing this Bacardi "silver label" on the bottle offered him at a cheaper price [because of savings in customs duties] than the "gold label" with the gold triangle on it, and than the "white label", might very easily, in nine cases out of ten, think either one of two things: Either (1) that even though marked "Puerto Rican Rum" yet this is rum of the well-known Cuban company, the Bacardi organization, and must be good because it is made by Bacardi, and buys it because of the *Cuban* Bacardi name which he associates with Cuba, and hence with good quality; or else, perhaps more probably, (2) seeing the silver label, the words *"Carta de Plata"*, and that it is marked "Puerto Rican Rum", he will conclude that it is Bacardi's *second quality* rum and, think that the cheaper price denotes inferior quality, *and will come to associate inferior quality with Puerto Rican rum* in his mind,—and will almost certainly come unconsciously to associate that idea of inferior quality with his thought of all brands of Puerto Rican rum.

The resulting injury, not only to other Puerto Rican producers, but also to Puerto Rican industry generally, is plain. Who shall say that the Legislature of Puerto Rico is without power to prevent it?

F. *The reputation of Puerto Rico as a place from which first quality,*—and not second quality,—*products come is vital to the Island,* to its people, and to all its industries. This court will take a judicial notice of the acts of the Legislature to encourage the sale of Puerto Rican coffee in the mainland United States ["Cafe Rico", "the Coffee of Royalty"], and for the encouragement of what is called "Tourism" in the Island, to make the people of the mainland acquainted with the attractions and with the excellent quality of the products of the Island, and the appropriations of money from the insular Treasury for those purposes, and the campaign to those ends being conducted in the mainland. And of the distressing situation of the Island with reference to its great needlework industry in consequence of the effects of the Trade Agreement with Switzerland and of the "wages and hours" laws, and the consequent necessity of fostering the reputation of high quality for that product, since, with these handicaps, only the finest quality of Puerto Rican needlework and lingerie can be profitably marketed; and similarly as to the tobacco industry. And of the constant necessity to emphasize the high quality of Puerto Rican products, and always to endeavor to off-set what seems to be a nation-wide tendency unconsciously to depreciate them [perhaps just because they are domestic products, and not "imported" or "foreign," as are those of Cuba],—the constant tendency, for example, to buy a high class hand-made Puerto Rican cigar readily if only it is labeled "Cuban", and to buy highclass Puerto Rican lingerie if it is labeled "French". And so, therefore, it is vital to the Island of Puerto Rico with its tremendously dense population accentuating all of its governmental problems, and vital to all of its industries, that the repu-

tation of one of its products, which it hopes to build up into a very great product,—its rum, shall not be slandered by marketing it in such a manner as to give the erroneous impression that Puerto Rican rum is a product of secondary quality.

The Legislature cannot be said to be without the power to protect Puerto Rican industry in this regard.

G. The District Court says (R. 102) "That whether so intended or not" "the Act has the appearance as being so framed as to exclude only the plaintiff." And that, "It is difficult to conceive of a more glaring discrimination". What the court plainly had in mind is that it does not appear that any other alien manufacturer whose trade-marks had not been used in Puerto Rico prior to February 1, 1936, appears as yet to have challenged the Act, or to have attempted to force its way into the liquor manufacturing field in Puerto Rico since the Acts in question were enacted. There may, or there may not be, other organizations similarly situated with the plaintiff, who would like to come in. Whether there be or not is immaterial. If there be only this one in the class, that does not give it a monopolistic right to defy the local laws. To the contrary, it may the better illustrate their value and necessity. Competition of just such world famous alien organizations, with the advantages of their famous names and the backing of great accumulated capital, would seem to be among the sort of things that the Legislature may properly consider "unfair" to the local Island industry. The clause in the Act permitting continuance of the use of labels or brands already established in Puerto Rico, or in the continental United States, prior to February 1, 1936, is not an unusual provision, nor in any way unfairly discriminative against foreign organizations that did not seek to come in before that time. On the contrary, it seems quite reasonable to protect those who had already come in while the local laws permitted it, had invested money and established themselves at that time.

H. As the Circuit Court of Appeals said (R. 442; *ante,* p. 9.

> "We think the court's ruling that the statutes are invalid as constituting a denial of equal protection of the laws may not stand. It is true that when this case was heard by the District Judge, the appellee" [*petitioner*] "was the only manufacturer affected by the particular statutory provision here considered. But they applied to all who might later engage in the business."

Point XIV

No question of actual deprivation of property is here involved.

On the contrary it appears (*ante,* Footnote 8, pp. 13-14, and *ante,* 4-5, 25-26) that this Bacardi organization did not come into the Island before they had full notice of the intention of the Legislature, in the spring of 1936, to enact laws along these lines; and did not in any way definitely obligate themselves, or invest any substantial amount of money, until after the enactment of the second act of the series, Act No. 6 of June 30, 1936. The only question possibly presented here is, therefore, not of any supposed actual deprivation of property, but only of a deprivation of a supposed "liberty" on the part of this alien organization to force its way into the field of manufacturing liquors in Puerto Rico, in defiance of the local law. It possesses no such absolute liberty.

Petitioner says (*Brief,* p. 40), confessedly entirely outside of the record, that it is "advised" "that the bill, as introduced did not contain the objectionable provisions"; and that "These were amendments adopted shortly before the passage of the bill". *But petitioner never made any such claim in either of the lower courts,* either in the District Court or in the Circuit Court of Appeals. The suggestion is not based upon anything in the record; and is directly in the face of the conclusive presumption that the Legislature did not disobey the requirement of the Organic Act in

paragraph 5 of Section 34, *supra,* that *"No bill shall be so altered or amended on its passage through either House as to change its original purpose"*. It may be observed, however, that petitioner's statement as to being "advised" that these "were amendments *adopted* shortly before the passage of the bill" (*Italics supplied*) *does not necessarily negative* their having been originally *introduced* within the first forty days of the session, as required by paragraph 6 of Section 34 of the Organic Act, in connection with paragraph 5, *supra,*—that is to say, on or before March 21, 1936.

If petitioner had really had any substantial ground for an attack on the statute along this line, it may safely be concluded that it would have been presented to the District Court, and would appear somewhere in this record.

CONCLUSION

The statutes here assailed are valid. The judgment of the Circuit Court of Appeals, reversing the decree of the District Court, was right, and should be affirmed.

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APPENDIX

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APPENDIX

GENERAL INTER-AMERICAN CONVENTION FOR TRADE MARK AND COMMERCIAL PROTECTION

(46 Stat., Part 2, pp. 2907 *et seq.*)

The Governments of Peru, Bolivia, Paraguay, Ecuador, Uruguay, Dominican Republic, Chile, Panama, Venezuela, Costa Rica, Cuba, Guatemala, Haiti, Colombia, Brazil, Mexico, Nicaragua, Honduras and the United States of America, represented at the Pan American Trade Mark Conference at Washington in accordance with the terms of the resolution adopted on February 15, 1928, at the Sixth International Conference of American States at Habana, and the resolution of May 2, 1928, adopted by the Governing Board of the Pan American Union at Washington,

Considering it necessary to revise the "Convention for the Protection of Commercial, Industrial, and Agricultural Trade Marks and Commercial Names," signed at Santiago, Chile, on April 28, 1923, which replaced the "Convention for the Protection of Trade Marks" signed at Buenos Aires on August 20, 1910, with a view of introducing therein the reforms which the development of law and practice have made advisable;

Animated by the desire to reconcile the different juridical systems which prevail in the several American Republics; and

Convinced of the necessity of undertaking this work in its broadest scope, with due regard for the respective national legislations,

Have resolved to negotiate the present Convention for the protection of trade marks, trade names and for the repression of unfair competition and false indica-

tions of geographical origin, and for this purpose have appointed as their respective delegates,

Peru:

Alfredo Gonzalez-Prada.

Bolivia:

Emeterio Cano de la Vega.

• • •

Cuba:

Gustavo Gutierrez.

Alfredo Bufill.

• • •

United States of America:

Francis White.

Thomas E. Robertson.

Edward S. Rogers.

CHAPTER I.

EQUALITY OF CITIZENS AND ALIENS AS TO TRADEMARK AND COMMERCIAL PROTECTION

Article 1.

The Contracting States bind themselves to grant to the nationals of the other Contracting States and to domiciled foreigners who own a manufacturing or commercial establishment or an agricultural development in any of the States which have ratified or adhered to the present Convention the same rights and remedies which their laws extend to their own nationals or domiciled persons with respect to trade marks, trade names, and the repression of unfair competition and false indications of geographical origin or source.

CHAPTER II.

TRADE MARK PROTECTION

Article 2.

The person who desires to obtain protection for his

marks in a country other than his own, in which this Convention is in force, can obtain protection either by applying directly to the proper office of the State in which he desires to obtain protection, or through the Inter-American Trade Mark Bureau referred to in the Protocol on the Inter-American Registration of Trade Marks, if this Protocol has been accepted by his country and the country in which he seeks protection.

Article 3.

Every mark duly registered or legally protected in one of the Contracting States shall be admitted to registration or deposit and legally protected in the other Contracting States, upon compliance with the formal provisions of the domestic law of such States.

Registration or deposit may be refused or cancelled of marks:

1. The distinguishing elements of which infringe rights already acquired by another person in the country where registration or deposit is claimed.

2. Which lack any distinctive character or consist exclusively of words, symbols, or signs which serve in trade to designate the class, kind, quality, quantity, use, value, place of origin of the products, time of production, or which are or have become at the time registration or deposit is sought, generic or usual terms in current language or in the commercial usage of the country where registration or deposit is sought, when the owner of the marks seeks to appropriate them as a distinguishing element of his mark.

In determining the distinctive character of a mark, all the circumstances existing should be taken into account, particularly the duration of the use of the mark and if in fact it has acquired in the country where

deposit, registration or protection is sought, a significance distinctive of the applicant's goods.

3. Which offend public morals or which may be contrary to public order.

4. Which tend to expose persons, institutions, beliefs, national symbols or those of associations of public interest, to ridicule or contempt.

5. Which contain representations of racial types or scenes typical or characteristic of any of the Contracting States, other than that of the origin of the mark.

6. Which have as a principal distinguishing element, phrases, names or slogans which constitute the trade name or an essential or characteristic part thereof, belonging to some person engaged in any of the other Contracting States in the manufacture, trade or production of articles or merchandise of the same class as that to which the mark is applied.

Article 4.

The Contracting States agree to refuse to register or to cancel the registration and to prohibit the use, without authorization by competent authority, of marks which include national and state flags and coats-of-arms, national or state seals, designs on public coins and postage stamps, official labels, certificates or guarantees, or any national or state official insignia or simulations of any of the foregoing.

Article 5.

Labels, industrial designs, slogans, prints, catalogues or advertisements used to identify or to advertise goods, shall receive the same protection accorded to trade marks in countries where they are considered as such, upon complying with the requirements of the domestic trade mark law.

Article 6.

The Contracting States agree to admit to registration or deposit and to protect collective marks and marks of associations, the existence of which is not contrary to the laws of the country of origin, even when such associations do not own a manufacturing, industrial, commercial or agricultural establishment.

Each country shall determine the particular conditions under which such marks may be protected.

States, Provinces or Municipalities, in their character of corporations, may own, use, register or deposit marks and shall in that sense enjoy the benefits of this Convention.

Article 7.

Any owner of a mark protected in one of the Contracting States in accordance with its domestic law, who may know that some other person is using or applying to register or deposit an interfering mark in any other of the Contracting States, shall have the right to oppose such use, registration or deposit and shall have the right to employ all legal means, procedure or recourse provided in the country in which such interfering mark is being used or where its registration or deposit is being sought, and upon proof that the person who is using such mark or applying to register or deposit it, had knowledge of the existence and continuous use in any of the Contracting States of the mark on which opposition is based upon goods of the same class, the opposer may claim for himself the preferential right to use such mark in the country where the opposition is made or priority to register or deposit it in such country, upon compliance with the requirements established by the domestic legislation in such country and by this Convention.

Article 8.

When the owner of a mark seeks the registration

or deposit of the mark in a Contracting State other than that of origin of the mark and such registration or deposit is refused because of the previous registration or deposit of an interfering mark, he shall have the right to apply for and obtain the cancellation or annulment of the interfering mark upon proving, in accordance with the legal procedure of the country in which cancellation is sought, the stipulations in Paragraph (a) and those of either Paragraph (b) or (c) below:

(a) That he enjoyed legal protection for his mark in another of the Contracting States prior to the date of the application for the registration or deposit which he seeks to cancel; and

(b) that the claimant of the interfering mark, the cancellation of which is sought, had knowledge of the use, employment, registration or deposit in any of the Contracting States of the mark for the specific goods to which said interfering mark is applied, prior to adoption and use thereof or prior to the filing of the application or deposit of the mark which is sought to be cancelled; or

(c) that the owner of the mark who seeks cancellation based on a prior right to the ownership and use of such mark, has traded or trades with or in the country in which cancellation is sought, and that goods designated by his mark have circulated and circulate in said country from a date prior to the filing of the application for registration or deposit for the mark, the cancellation which is claimed, or prior to the adoption and use of the same.

Article 9.

When the refusal of registration or deposit of a mark is based on a registration previously effected in accordance with the Convention, the owner of the refused mark shall have the right to request and obtain the cancellation of the mark previously registered or deposited,

by proving, in accordance with the legal procedure of the country in which he is endeavoring to obtain registration or deposit of his mark, that the registrant of the mark which he desires to cancel, has abandoned it. The period within which a mark may be declared abandoned for lack of use shall be determined by the internal law of each country, and if there is no provision in the internal law, the period shall be two years and one day beginning from the date of registration or deposit if the mark has never been used, or one year and one day if the abandonment or lack of use took place after the mark has been used.

Article 10.

The period of protection granted to marks registered, deposited or renewed under this Convention, shall be the period fixed by the laws of the State in which registration, deposit or renewal is made at the time when made.

Once the registration or deposit of a mark in any Contracting State has been effected, each such registration or deposit shall exist independently of every other and shall not be affected by changes that may occur in the registration or deposit of such mark in the other Contracting States, unless otherwise provided by domestic law.

Article 11.

The transfer of the ownership of a registered or deposited mark in the country of its original registration shall be effective and shall be recognized in the other Contracting States, provided that reliable proof be furnished that such transfer has been executed and registered in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

The use and exploitation of trade marks may be transferred separately for each country, and such transfer shall be recorded upon the production of reliable proof that such transfer has been executed in accordance with the internal law of the State in which such transfer took place. Such transfer shall be recorded in accordance with the legislation of the country in which it is to be effective.

Article 12.

Any registration or deposit which has been effected in one of the Contracting States, or any pending application for registration or deposit, made by an agent, representative or customer of the owner of a mark in which a right has been acquired in another Contracting State through its registration, prior application or use, shall give to the original owner the right to demand its cancellation or refusal in accordance with the provisions of this Convention and to request and obtain the protection for himself, it being considered that such protection shall revert to the date of the application of the mark so denied or cancelled.

Article 13.

The use of a trade mark by its owner in a form different in minor or non-substantial elements from the form in which the mark has been registered in any of the Contracting States, shall not entail forfeiture of the registration or impair the protection of the mark.

In case the form or distinctive elements of the mark are substantially changed, or the list of goods to which it is to be applied is modified or increased, the proprietor of the mark may be required to apply for a new registration, without prejudice to the protection of the original mark or in respect to the original list of goods.

The requirements of the laws of the Contracting States with respect to the legend which indicates the authority

for the use of trade marks, shall be deemed fulfilled in respect to goods of foreign origin if such marks carry the words or indications legally used or required to be used in the country of origin of the goods.

CHAPTER III.

PROTECTION OF COMMERCIAL NAMES

Article 14.

Trade names or commercial names of persons entitled to the benefits of this Convention shall be protected in all the Contracting States. Such protection shall be enjoyed without necessity of deposit or registration, whether or not the name forms part of a trade mark.

Article 15.

The names of an individual, surnames and trade names used by manufacturers, industrialists, merchants or agriculturists to denote their trade or calling, as well as the firm's name, the name or title legally adopted and used by associations, corporations, companies or manufacturing, industrial, commercial or agricultural entities, in accordance with the provisions of the respective national laws, shall be understood to be commercial names.

Article 16.

The protection which this Convention affords to commercial names shall be:

(a) to prohibit the use or adoption of a commercial name identical with or deceptively similar to one legally adopted and previously used by another engaged in the same business in any of the Contracting States; and

(b) to prohibit the use, registration or filing of a trade mark the distinguishing elements of which consist of the whole or an essential part of a commercial name legally adopted and previously used by another owner domiciled or established in any of the Contracting States,

engaged in the manufacture, sale or production of products or merchandise of the same kind as those for which the trade mark is intended.

Article 17.

Any manufacturer, industrialist, merchant or agriculturist domiciled or established in any of the Contracting States, may, in accordance with the law and the legal procedure of such countries, oppose the adoption, use, registration or deposit of a trade mark for products or merchandise of the same class as those sold under his commercial name, when he believes that such trade mark or the inclusion in it of the trade or commercial name or a simulation thereof may lead to error or confusion in the mind of the consumer with respect to such commercial name legally adopted and previously in use.

Article 18.

Any manufacturer, industrialist, merchant or agriculturist domiciled or established in any of the Contracting States may, in accordance with the law and procedure of the country where the proceeding is brought, apply for and obtain an injunction against the use of any commercial name or the cancellation of the registration or deposit of any trade mark, when such name or mark is intended for use in the manufacture, sale or production of articles or merchandise of the same class, by proving:

(a) that the commercial name or trade mark, the enjoining or cancellation of which is desired, is identical with or deceptively similar to his commercial name already legally adopted and previously used in any of the Contracting States, in the manufacture, sale or production of articles of the same class, and

(b) that prior to the adoption and use of the commercial name, or to the adoption and use or application for registration or deposit of the trade mark, the can-

cellation of which is sought, or the use of which is sought to be enjoined, he used and continues to use for the manufacture, sale or production of the same products or merchandise his commercial name adopted and previously used in any of the Contracting States or in the State in which cancellation or injunction is sought.

Article 19.

The protection of commercial names shall be given in accordance with the internal legislation and by the terms of this Convention, and in all cases where the internal legislation permits, by the competent governmental or administrative authorities whenever they have knowledge or reliable proof of their legal existence and use, or otherwise upon the motion of any interested party.

CHAPTER IV.

REPRESSION OF UNFAIR COMPETITION

Article 20.

Every act or deed contrary to commercial good faith or to the normal and honorable development of industrial or business activities shall be considered as unfair competition and, therefore, unjust and prohibited.

Article 21.

The following are declared to be acts of unfair competition and unless otherwise effectively dealt with under the domestic laws of the Contracting States shall be repressed under the provisions of this Convention:

(a) Acts calculated directly or indirectly to represent that the goods or business of a manufacturer, industrialist, merchant or agriculturist are the goods or business of another manufacturer, industrialist, merchant or agriculturist of any of the other Contracting States, whether such representation be made by the ap-

propriation or simulation of trade marks, symbols, distinctive names, the imitation of labels, wrappers, containers, commercial names, or other means of identification;

(b) The use of false descriptions of goods, by words, symbols or other means tending to deceive the public in the country where the acts occur, with respect to the nature, quality, or utility of the goods;

(c) The use of false indications of geographical origin or source of goods, by words, symbols, or other means which tend in that respect to deceive the public in the country in which these acts occur;

(d) To sell, or offer for sale to the public an article, product or merchandise of such form or appearance that even though it does not bear directly or indirectly an indication of origin or source, gives or produces, either by pictures, ornaments, or language employed in the text, the impression of being a product, article or commodity originating, manufactured or produced in one of the other Contracting States;

(e) Any other act or deed contrary to good faith in industrial, commercial or agricultural matters which, because of its nature or purpose, may be considered analogous or similar to those above mentioned.

Article 22.

The Contracting States which may not yet have enacted legislation repressing the acts of unfair competition mentioned in this chapter, shall apply to such acts the penalties contained in their legislation on trade marks or in any other statutes, and shall grant relief by way of injunction against the continuance of said acts at the request of any party injured; those causing such injury shall also be answerable in damages to the injured party.

CHAPTER V.

REPRESSION OF FALSE INDICATIONS OF GEOGRAPHICAL ORIGIN OR SOURCE

Article 23.

Every indication of geographical origin or source which does not actually correspond to the place in which the article, product or merchandise was fabricated, manufactured, produced or harvested, shall be considered fraudulent and illegal, and therefore prohibited.

Article 24.

For the purposes of this Convention the place of geographical origin or source shall be considered as indicated when the geographical name of a definite locality, region, country or nation, either expressly and directly, or indirectly, appears on any trade mark, label, cover, packing or wrapping, of any article, product or merchandise, directly or indirectly thereon, provided that said geographical name serves as a basis for or is the dominant element of the sentences, words or expressions used.

Article 25.

Geographical names indicating geographical origin or source are not susceptible of individual appropriation, and may be freely used to indicate the origin or source of the products or merchandise or his commercial domicile, by any manufacturer, industrialist, merchant or agriculturist established in the place indicated or dealing in the products there originating.

Article 26.

The indication of the place of geographical origin or source, affixed to or stamped upon the product or merchandise, must correspond exactly to the place in which the product or merchandise has been fabricated, manufactured or harvested.

Article 27.

Names, phrases or words, constituting in whole or in part geographical terms which through constant, general and reputable use in commerce have come to form the name or designation itself of the article, product or merchandise to which they are applied, are exempt from the provisions of the preceding articles; this exception, however, does not include regional indications of origin of industrial or agricultural products the quality and reputation of which to the consuming public depend on the place of production or origin.

Article 28.

In the absence of any special remedies insuring the repression of false indications of geographical origin or source, remedies provided by the domestic sanitary laws, laws dealing with misbranding and the laws relating to trade marks or trade names, shall be applicable in the Contracting States.

CHAPTER VI.

REMEDIES

Article 29.

The manufacture, exploitation, importation, distribution, or sale is forbidden of articles or products which directly or indirectly infringe any of the provisions of this Convention with respect to trade mark protection; protection and safeguard of commercial names; repression of unfair competition; and repression of false indications of geographical origin or source.

Article 30.

Any act prohibited by this Convention will be repressed by the competent administrative or judicial authorities of the government of the state in which the offense was committed, by the legal methods and procedure existing

in said country, either by official action, or at the request of interested parties, who may avail themselves of the rights and remedies afforded by the laws to secure indemnification for the damage and loss suffered; the articles, products or merchandise or their marks, which are the instrumentality of the acts of unfair competition, shall be liable to seizure or destruction, or the offending markings obliterated, as the case may be.

Article 31.

Any manufacturer, industrialist, merchant or agriculturist, interested in the production, manufacture, or trade in the merchandise or articles affected by any prohibited act or deed, as well as his agents or representatives in any of the Contracting States and the consular officers of the state to which the locality or region falsely indicated as the place to which belongs the geographical origin or source, shall have sufficient legal authority to take and prosecute the necessary actions and proceedings before the administrative authorities and the courts of the Contracting States.

The same authority shall be enjoyed by official commissions or institutions and by syndicates or associations which represent the interests of industry, agriculture or commerce and which have been legally established for the defense of honest and fair trade methods.

CHAPTER VII.

GENERAL PROVISIONS

Article 32.

The administrative authorities and the courts shall have sole jurisdiction over administrative proceedings and administrative judgments, civil or criminal, arising in matters relating to the application of the national law.

Any differences which may arise with respect to the

interpretation or application of the principles of this Convention shall be settled by the courts of justice of each State, and only in case of the denial of justice shall they be submitted to arbitration.

Article 33.

Each of the Contracting States, in which it does not yet exist, hereby agrees to establish a protective service, for the suppression of unfair competition and false indication of geographical origin or source, and to publish for opposition in the official publication of the government, or in some other periodical, the trade marks solicited and granted as well as the administrative decisions made in the matter.

Article 34.

The present Convention shall be subject to periodic revision with the object of introducing therein such improvements as experience may indicate, taking advantage of any international conferences held by the American States, to which each country shall send a delegation in which it is recommended that there be included experts in the subject of trade marks, in order that effective results may be achieved.

The national administration of the country in which such conferences are held shall prepare, with the assistance of the Pan American Union and the Inter-American Trade Mark Bureau, the work of the respective conference.

The Director of the Inter-American Trade Mark Bureau may attend the sessions of such conferences and may take part in the discussions, but shall have no vote.

Article 35.

The provisions of this Convention shall have the force of law in those States in which international treaties

possess that character, as soon as they are ratified by their constitutional organs.

The Contracting States in which the fulfillment of international agreements is dependent upon the enactment of appropriate laws, on accepting in principle this Convention, agree to request of their legislative bodies the enactment of the necessary legislation in the shortest possible period of time and in accordance with their constitutional provisions.

Article 36.

The Contracting States agree that, as soon as this Convention becomes effective, the Trade Mark Conventions of 1910 and 1923 shall automatically cease to have effect; but any rights which have been acquired, or which may be acquired thereunder, up to the time of the coming into effect of this Convention, shall continue to be valid until their due expiration.

Article 37.

The present Convention shall be ratified by the Contracting States in conformity with their respective constitutional procedures.

The original Convention and the instruments of ratification shall be deposited with the Pan American Union which shall transmit certified copies of the former and shall communicate notice of such ratifications to the other signatory Governments, and the Convention shall enter into effect for the Contracting States in the order that they deposit their ratifications.

This Convention shall remain in force indefinitely, but it may be denounced by means of notice given one year in advance, at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other States. All denunciations shall be sent to the Pan American

Union which will thereupon transmit notice thereof to the other Contracting States.

The American States which have not subscribed to this Convention may adhere thereto by sending their respective official instrument to the Pan American Union which, in turn, will notify the governments of the remaining Contracting States in the manner previously indicated.

In witness whereof the above named delegates have signed this Convention in English, Spanish, Portuguese and French, and thereto have affixed their respective seals.

Done in the City of Washington, on the twentieth day of February in the year one thousand nine hundred and twenty-nine.

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